Approved: 2/9/93
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:06 on February 4, 1993 in Room 529-S of the Capitol.

All members were present.

Committee staff present: William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Gerry Ray, City of Overland Park
Linda Sebastian, Kansas State Nurses Association
David Ross, Kansas Assn. of Life Underwriters
Darrell Knudson, Fourth Financial Corporation
Gary Sherrer, Fourth Financial Corporation
James Maag, Kansas Bankers Association
Clark Young, Community Bankers Association
Pete McGill, Community Bankers Association

Others attending: See attached list

Gerry Ray, City of Overland Park, appeared before the committee to request introduction of a bill pertaining to requirements under COBRA for continuation of insurance after termination. The bill would add to K.S.A.40-2209 section (e), "Employee was terminated by reason of employee's gross misconduct." A motion was made by Senator Steffes and seconded by Senator Lee to introduce the legislation. The motion carried.

Linda Sebastian, KSNA, appeared before the committee to request introduction of a bill to allow direct reimbursement to ARNP's in all counties. (Attachment #1.) Senator Steffes made a motion, seconded by Senator Lee, to introduce this legislation. The motion carried.

David Ross, Kansas Association of Life Underwriters, appeared before the committee to request introduction of a bill to allow owners of mutual securities to transfer benefits on death. (Attachment #2.) A motion was made by Senator Lawrence and seconded by Senator Praeger to introduce this legislation. The motion carried.

The chairman opened the hearing on **SB 104**, limitations on ownership of banks. Darrell Knudson, Fourth Financial Corporation, presented brief remarks in support of this bill. Gary Sherrer, Fourth Financial Corporation, appeared as a proponent, summarizing for the committee the advantages of raising the deposit cap from 12% to 18%. (Attachment #3.)

James Maag, Kansas Bankers Association, appeared in opposition to **SB 104** and presented the poll recently conducted by the KBA. (Attachment #4.) In response to Senator Steffes' question, Mr. Maag advised that the poll referred to in his testimony was taken of CEO's and that no analysis was done of the amount of deposits in those banks who voted for or against the bill. Senator Petty inquired regarding the content of the cover letter accompanying the poll questionnaire and Mr. Maag responded that the letter simply requested a return and did not go into the pros and cons of the bill. Senator Hensley asked whether the 57% return rate was comparable with past polls and Mr. Maag responded that the return rate was slightly lower due to the time limitations. In response to Senator Lawrence's question, Mr. Maag advised that the 12% cap applies only to bank holding companies and subsidiaries. In response to Senator Steffes' question, Mr. Maag advised that bankers who oppose the bill do so because of their concern that there should not be a concentration of deposits above a certain percent.

Clark Young, Community Bankers Association, appeared in opposition to the bill. (Attachment #5.) Mr. Young stated that the membership in the Community Bankers Association is basically the same as in the Kansas Bankers Association.

Pete McGill, Community Bankers Association, also appeared in opposition to the bill. (Attachment #6.) Mr. McGill provided a brief history of the deposit cap legislation.

There were no further questions and no other conferees; the hearing on **SB 104** was closed. A motion was made by Senator Lawrence and seconded by Senator Corbin to recommend **SB 104** favorably. Following discussion, the committee agreed not to amend the bill by changing the percentage. The motion carried. Senator Hensley is recorded as casting a negative vote.

Chairman Bond announced that the meeting scheduled for Friday, February 5, has been canceled. The next scheduled meeting will be Tuesday, February 9.

The committee adjourned at 10:00 a.m.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 2/4/93

NAME	ADDRESS	ORGANIZATION
GARY SHERRER	WICHITA	FFC
DARRELL KNUDSON	WICHITA	FFC
Ken Bahr	Topeka	FFC
Jim Maag	"	KBA
Andrea Chandler	Topeka	Journal
TIM SIDES	TOPEKA	BANK IV KANSAS

KSNA

the voice of Nursing in Kansas

For More Information Contact
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Introduction of A Bill (Request)

Chairman Bond and members of the Financial Institutions and Insurance Committee, my name is Linda Sebastian MN, RN and I am a Clinical Nurse Specialist in Psychiatric Mental Health Nursing. I am hear today as Chairperson of the Kansas State Nurses Association Advanced Practice Conference Group to ask this Committee to introduce a bill aimed at changing the current reimbursement laws for health care providers to include reimbursement to advanced registered nurse practitioners (ARNPs) in the six urban counties for currently (covered) services. In 1990 a provision was passed that provided reimbursement for ARNP's in all but six Kansas counties: Wyandotte, Johnson, Leavenworth, Douglas, Shawnee and Sedgwick. This legislation would amend the current law to include reimbursement to ARNP's in these six counties. Attached is the copy of the bill draft.

We would welcome the opportunity to present testimony before this committee regarding implications and necessity of this bill. Thank you for your consideration of this request for a bill to be introduced.

Senate 7.1+1
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Attachment #1

Senate Bill No.

An act concerning insurance coverage to include reimbursement for services performed by advanced registered nurse practitioners in certain counties; amending K.S.A. 1992 Supp. 40-2250

Notwithstanding any provision of an individual or group policy or contract for health and accident insurance delivered within the state, whenever such policy or contact shall provide for reimbursement for any services within the lawful scope of practice of an advanced registered nurse practitioner within the state of Kansas, the insured, or any other person covered by the policy or contract, shall be allowed and entitled to reimbursement for such service irrespective of whether it was provided or performed by a duly licensed physician or an advanced registered nurse practitioner. ~~Notwithstanding the foregoing provisions, reimbursement shall not be mandated with respect to services performed by an advanced registered nurse practitioner in Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte county unless at the time such services are performed such county is designated pursuant to K.S.A. 76-375, and amendments thereto, as critically medically underserved or medically underserved in primary care as defined by K.S.A. 76-374, and amendments thereto.~~

This act shall take effect and be in force from and after its publication in the statute book.

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Kansas--Facts About Nurses In Advanced Practice

Advanced Registered Nurse Practitioners (ARNP)

The following four categories of ARNP's in Kansas, and the number in each category are listed below:

Nurse Practitioners (NP)	219
Clinical Nurse Specialists (CNS)	147
Midwives (CNM)	6
Registered Nurse Anesthetists (RNA)	46

A brief description of educational requirements of each categry of ARNP is provided below. Additionally statistical information and schools preparing each category in Kansas is listed.

NURSE PRACTITIONER (NP)

Number:	Kansas	219
	U.S.	25,000 - 30,000

Education: Most of the approximately 150 NP education programs in the United States today confer a master's degree. At least 36 states require NPs to be nationally certified by the ANA or a speciality nursing organization. Kansas has two schools, Fort Hays State University and Wichita State University. Both programs began August of 1992. They admit 8-10 students per year. Kansas University is planning to begin a Nurse Practitioner program in the fall of 1993.

CERTIFIED NURSE MIDWIFE (CNM)

Number:	Kansas	6
	US	about 5,000

Education: An average one and one-half years of specialized education beyond nursing school, either in an accredited certificate, or like NPs, increasingly at the master's level. Kansas has no nurse midwifery school.

CLINICAL NURSE SPECIALIST (CNS)

Number:	Kansas	147
	US	about 40,000

Education: Registered nurses with advanced nursing degrees--master's or doctoral-- who work in clinical settings, community or office-based settings, and hospitals and are experts in a specialized area such as cardiac or cancer care, mental health, or neonatal health. Kansas has three programs preparing CNS's, University of Kansas, Wichita State University and Fort Hays State University. The Fort Hays State program is only two years old, the other 2 schools have had programs for a number of years.

CERTIFIED REGISTERED NURSE ANESTHETISTS (CRNA)

Number:	Kansas	346
	US	25,000

Education: Registered nurses who complete 2-3 years additional education beyond the four-year bachelor of science in nursing, as well as meeting national certification and recertification requirements. Kansas has two schools preparing RNA's, University of Kansas in Kansas City and an outreach program from Texas Wesleyan in Wichita.

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UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

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UNIFORM TOD SECURITY REGISTRATION ACT CHART OF STATE ENACTMENTS

Jurisdiction	Adopting Act	Effective Date	Code Citation
Colorado*	Ch. 116, Law 1990	July 1, 1990	15-15-301—15-15-311 Colo. Rev. Stat.
Minnesota*	Ch. 461, Law 1992	June 1, 1992	524.6-30—524.6-311 Minn. Stat.
Missouri	H.B. 145, Law 1989	Jan. 1, 1990	461.003—461.081 Mo. Rev. Stat.
New Mexico*	Ch. 66, Law 1992	July 1, 1992	45-6-301—45-6-311 N.M. Stat. Anno.
North Dakota*	Ch. 351, Law 1991	July 1, 1991	30.1-31-21—30.1-31-30 N.D. Century Code
Oregon*	Ch. 306, Law 1991	Sept. 29, 1991	59.535—59.585 Ore. Rev. Stat.
Wisconsin*	Act 331, Law 1990	May 11, 1990	705.21—705.30 Wisc. Stat.

* This jurisdiction has adopted all, or substantially all, of the provisions of the Uniform Transfer on Death Security Registration Act.

[The next page is 3011.]

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UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

PREFATORY NOTE

This Act is a free-standing version of Part 3 of Article VI of the Uniform Probate Code, as adopted by the National Conference of Commissioners on Uniform State Laws in 1989. The purpose of the Act is to allow the owner of securities to register the title in transfer-on-death (TOD) form. Mutual fund shares and accounts maintained by brokers and others to reflect a customer's holdings of securities (so-called "street accounts") are also covered. The legislation enables an issuer, transfer agent, broker, or other such intermediary to transfer the securities directly to the designated transferee on the owner's death. Thus, TOD registration achieves for securities a certain parity with existing TOD and pay-on-death (POD) facilities for bank deposits and other assets passing at death outside the probate process.

The TOD registration under this Act is designed to give the owner of securities who wishes to arrange for a nonprobate transfer at death an alternative to the frequently troublesome joint tenancy form of title. Because joint tenancy registration of securities normally entails a sharing of lifetime entitlement and control, it works satisfactorily only so long as the co-owners cooperate. Difficulties arise when co-owners fall into disagreement, or when one becomes afflicted or insolvent.

Use of the TOD registration form encouraged by this legislation has no effect on the registered owner's full control of the affected security during his or her lifetime. A TOD designation and any beneficiary interest arising under the designation ends whenever the registered asset is transferred, or whenever the owner otherwise complies with the issuer's conditions for changing the title form of the investment. The Act recognizes, in Section 2, that co-owners with right of survivorship may be registered as owners together with a TOD beneficiary designated to take if the registration remains unchanged until the beneficiary survives the joint owners. In such a case, the survivor of the joint owners has full control of the asset and may change the registration form as he or she sees fit after the other's death.

Implementation of the Act is wholly optional with issuers. The drafting committee received the benefit of considerable advice and assistance from representatives of the mutual fund and stock transfer industries during the course of its three years of preparatory work. Accordingly, it is believed that the Act takes full account of the practical requirements for efficient transfer within the securities industry.

Section 3 invites application of the legislation to locally owned securities though the statute may not have been locally enacted, so long as the Act is in force in a jurisdiction of the issuer or transfer agent. Thus, if the principal jurisdictions in which securities issuers and transfer agents are sited enact the measure, its benefit will become generally available to persons domiciled in states that do not at once enact the statute.

The legislation has been drafted as a separate Act, hence not interpolated as an expansion of the former UPC Article VI, Part 1, treating bank accounts ("multiple-party accounts"). Securities merit a distinct statutory regime, because a different principle has governed concurrent ownership of securities. By virtue either of statute or of account terms (contract), multiple-party bank accounts allow any one cotenant to consume or transfer account balances. See R. Brown, *The Law of Personal Property* § 65, at 217 (2d ed. 1955); Langbein, *The Nonprobate Revolution and the Future of the*

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Law of Succession, 97 Harv. L. Rev. 1108, 1112 (1984). The rule for securities, however, has been the rule that applies to real property: all cotenants must act together in transferring the securities. This difference in the legal regime reflects differences in function among the types of assets. Multiple-party bank accounts typically arise as convenience accounts, to facilitate frequent small transactions, often on an agency basis (as when spouses or relatives share an account). Securities resemble real estate in that the values are typically large and the transactions relatively infrequent, which is why the legal regime requires the concurrence of all concurrent owners for transfers affecting such assets.

Recently, of course, this distinction between bank accounts and securities has begun to crumble. Banks are offering certificates of deposit of large value under the same account forms that were devised for low-value convenience accounts. Meanwhile, brokerage houses with their so-called cash management accounts and mutual funds with their money market accounts have rendered securities subject to small recurrent transactions. In the latest developments, even the line between real estate and bank accounts is becoming indistinct, as the "home equity line of credit" creates a check-writing conduit to real estate values.

Nevertheless, even though new forms of contract have rendered the boundaries between securities and bank accounts less firm, the distinction seems intuitively correct for statutory default rules. True co-owners of securities, like owners of realty, should act together in transferring the asset.

The joint bank account and the Totten trust originated in ambiguous lifetime ownership forms, which required former UPC § 6-103 or comparable state legislation to clarify that an inter vivos transfer was not intended. In the securities field, by contrast, we start with unambiguous lifetime ownership rules. The sole purpose of the present statute is to facilitate a nonprobate TOD mechanism as an option for those owners.

[¶ 901]

SECTION 1. DEFINITIONS. In this [Act], unless the context otherwise requires:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

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(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

COMMENT

"Security" is defined as provided in UCC § 8-102 and includes shares of mutual funds and other investment companies. The defined term "security account" is not intended to include securities held in the name of a bank or similar institution as nominee for the benefit of a trust.

"Survive" is not defined. No effort is made in this Act to define survival as it is for purposes of intestate succession in UPC § 2-104 which requires survival by an heir of the ancestor for 120 hours. For purposes of this Act, survive is used in its common law sense of outliving another for any time interval no matter how brief. The drafting committee sought to avoid imposition of a new and unfamiliar meaning of the term on intermediaries familiar with the meaning of "survive" in joint tenancy registrations.

The definitions of "devisee," "heirs," "person," "personal representative," "property," and "state" are taken from Section 1-201 of the Uniform Probate Code which, as revised in 1989, includes this Act as Part 3 of Article VI.

LOCAL MODIFICATIONS

.106 Colorado. Omit ", unless the context otherwise requires". Omit definitions (2) through (6) and (11).

.124 Minnesota. Omit ", unless the context otherwise requires". Omit definitions (2) through (6) and (11).

.126 Missouri. Substitute:

461.005. Definitions.—In sections 461.003 to 461.081, unless the context otherwise requires, the following terms mean:

(1) **"Beneficiary"**, a person who is designated to receive a nonprobate transfer on surviving one or more persons, and includes a person who is designated a primary beneficiary, or a contingent beneficiary if the primary beneficiary or beneficiaries fail to survive, and the surviving lineal descendant substitutes of a deceased beneficiary;

(2) **"Beneficiary designation"**, a writing that is not a will that names the beneficiary or beneficiaries of a nonprobate transfer and that complies with all conditions of a governing instrument or law, including special requirements concerning necessary signatures, witnesses, proof of execution, delivery, acceptance, registration and the regulations of any transferor concerning beneficiary designations. Beneficiary designation also includes the provision in a deed or assignment that is not effective until death of one or more persons and that names the grantees of the deed or the assignees of the assignment, and a transfer on death direction that names beneficiaries on an account record, security certificate or instrument evidencing ownership of property;

(3) **"Joint owners"**, persons who hold property jointly with right of survivorship and a husband and wife who hold property as tenants by the entirety;

(4) **"Lineal descendants per stirpes"** and the abbreviation **"LDPS"**, a class of unnamed persons who are the lineal descendants per stirpes of an individual and who are to take upon surviving, in place of and with the same priority as the named individual for whom they are indicated as substitutes;

(5) **"Nonprobate transfer"**, a transfer after death of one or more persons of money, benefits, or property owned or controlled by the decedent, pursuant to a beneficiary designation or a writing that is not a will, and includes forgiveness of a debt or a promise that ceases to be subject to an obligation to pay or be performed by reason of the death of one of the parties to the agreement. A nonprobate transfer under sections 461.003 to 461.081 does not include survivorship rights in property held as joint tenants by the entirety, or a transfer of a remainderman on termination of a life tenancy, or a transfer under a trust established by an individual, either inter vivos or testamentary, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

(6) **"Owner"**, a person who has a right, exercisable alone or with others, to designate the person or persons, including the owner's estate, as the beneficiary or beneficiaries to

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whom a nonprobate transfer is to be made on the owner's death;

(7) **"Person"**, living individuals, entities capable of owning property and fiduciaries;

(8) **"Proof of death"**, includes a death certificate or record or report that is prima facie proof or evidence of death under section 472.290, RSMo;

(9) **"Property"**, any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights under an instrument evidencing ownership of property issued by a governmental agency and rights under a document of title within the meaning of section 400.1-201, RSMo;

(10) **"Registration in beneficiary form"**, an account record or a certificate or other written instrument evidencing ownership of property that includes after the names of the owners a transfer on death direction and the names of the beneficiaries to whom the transfer is to be made on death of all owners;

(11) **"Security"**, a certificated or uncertificated security as defined in section 400.8-102, RSMo, including securities as defined in section 409.401, RSMo;

(12) **"Survive"** and its derivatives, when used in reference to a decedent or beneficiary, means that the person survived the decedent by one hundred twenty hours. If the time of death of the decedent, or of the person who would otherwise be a surviving beneficiary, or the time of death of all relevant persons, cannot be determined, and it cannot be established that the person has survived the decedent by one hundred twenty hours, it will be deemed that the person failed to survive for the required period. When a governing instrument provides for a different period of survival or that certain circumstances raise a different presumption of survival or nonsurvival, "survive" shall have the meaning ascribed to it by the governing instrument;

(13) **"Transfer"**, a payment of money or benefits, the performance under a contract, the forgiveness of a debt or a promise, a delivery of property, the conveyance of title to property, a change of ownership on an account record and the cancellation and reissue of a security certificate or an instrument evidencing ownership of property;

(14) **"Transfer on death direction"**, a beneficiary designation included in the name in which an account is held or a security or other property is registered in beneficiary form and includes the term "pay on death direction" and the abbreviations "TOD" and "POD" after the names of the owners and before the names of the beneficiaries; and

(15) **"Transferor"**, a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records and accounts of an enterprise or on a certificate or document of title that evidences property rights. Transferor also means any governmental agency that issues certificates of ownership or title to property and a financial institution or broker who acts as a custodial agent for an owner's individual retirement account.

.132 New Mexico. Omit ", unless the context otherwise requires". Omit definitions (2) through (6) and (11).

.135 North Dakota. Omit ", unless the context otherwise requires". Omit definitions (2) through (6) and (11).

.150 Wisconsin. Omit "unless the context otherwise requires". After "(3)" substitute " 'Heir' has the meaning given in s. 851.09." Omit definition (4). Definition (5) after " 'representative' " substitute "has the meaning given in s. 851.23." Definition (6) after " 'Property' " substitute "has the meaning given in s. 851.27."

[¶ 902]

SECTION 2. REGISTRATION IN BENEFICIARY FORM; SOLE OR JOINT TENANCY OWNERSHIP. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

COMMENT

This section is designed to prevent co-owners from designating any death beneficiary other than one who is to take only upon survival of *all* co-owners. It coerces co-owning registrants to signal whether they hold as joint tenants with right of survivorship (JT TEN), as tenants by the entireties (T ENT), or as owners of community property. Also, it imposes survivorship on co-owners holding in a beneficiary form that fails to specify a survivorship form of holding. Tenancy in common and community property otherwise than in a survivorship setting is negated for registration in beneficiary form because persons desiring to signal independent death beneficiaries for each individual's fractional interest in a co-owned security normally will split their holding into separate registrations of the number of units previously constituting their fractional share. Once divided, each can name his or her own choice of death beneficiary.

The term "individuals," as used in this section, limits those who may register as owner or co-owner of a security in beneficiary form to natural persons. However, the section does not restrict individuals using this ownership form as to their choice of death beneficiary. The definition of "beneficiary form" in Section 1 indicates that any "person" may be designated beneficiary in a re-

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gistration in beneficiary form. "Person" is defined so that a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

LOCAL MODIFICATIONS

.126 Missouri. Omit this section.

[¶ 903]

SECTION 3. REGISTRATION IN BENEFICIARY FORM; APPLICABLE LAW. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

COMMENT

This section encourages registrations in beneficiary form to be made whenever a state with which either of the parties to a registration has contact has enacted this or a similar statute. Thus, a registration in beneficiary form of X Company shares might rely on an enactment of this Act in X Company's state of incorporation, or in the state of incorporation of X Company's transfer agent. Or, an enactment by the state of the issuer's principal office, the transfer agent's principal office, or of the issuer's office making the registration also would validate the registration. An enactment of the state of the registering owner's address at time of registration also might be used for validation purposes.

The last sentence of this section is designed, as is UPC § 6-101 (Rev. 1989), to establish a statutory presumption that a general principle of law is available to achieve a result like that made possible by this Act.

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

461.073. Scope and application of law.—1. Sections 461.003 to 461.081 apply to a nonprobate transfer on death if at the time the owner designated beneficiaries:

(1) The owner was a resident of this state;

(2) The obligation to pay or deliver arose in this state or the property was situated in this state; or

(3) The transferor was a resident of this state or had a place of business in this state and the obligation to make the transfer was accepted in this state. The direction for a nonprobate transfer on death of the owner and the obligation to execute the nonprobate transfer remains subject to the provisions of sections 461.003 to 461.081 despite a subsequent change in the beneficiaries, in the rules of the transferor under which the transfer is to be executed, in the residence of the owner, in the residence or place of business of the transferor or in the location of the property.

2. Sections 461.003 to 461.048 and 461.059 to 461.065 do not apply to accounts or deposits in financial institutions unless the provisions of sections 461.003 to 461.081 are incorporated into the certificate, account or deposit agreement in whole or in part by express reference.

3. Sections 461.003 to 461.081 apply to transfer on death directions given to a personal custodian under the Missouri personal custodian law to the extent that they do not conflict with section 404.560, RSMo.

4. Sections 461.003 to 461.065 do not apply to certificates of ownership or title issued by the director of revenue.

5. Unless otherwise provided in the trust instrument, sections 461.003 to 461.014, 461.021 to 461.051 and 461.059 to 461.076 do not apply to payments or property transfers from a trust under an inter vivos trust agreement, declaration of trust or testamentary trust of an individual, whether resulting by reason of an express distribution provision in the trust or by reason of the exercise of a power of appointment conferred in the trust, except to the extent under section 461.071 the trust estate was subject to satisfaction of some or all of the decedent's debts during the decedent's lifetime.

6. Sections 461.003 to 461.014 and 461.021 to 461.081 do not apply to property, money or benefits paid or transferred at death pursuant to a life or accidental death insurance policy, annuity, contract, plan or other product sold or administered by a life insurance company.

7. Sections 461.003 to 461.048 and 461.059 to 461.065 do not apply to any nonprobate transfer where the governing instrument or law expressly provides that this act shall not apply.

[¶ 904]

SECTION 4. ORIGINATION OF REGISTRATION IN BENEFICIARY FORM. A security, whether evidenced by certificate or account, is registered in

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beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

COMMENT

As noted above in commentary to Section 2, this Act places no restriction on who may be designated beneficiary in a registration in beneficiary form.

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

461.028. Registration of property, including accounts and securities in beneficiary form, effect.—1. Property, including:

(1) An account or deposit with any financial institution, broker, mutual fund, trustee, employer, plan fiduciary, corporation or governmental agency;

(2) Any government security, bond or note;

(3) A trust participation certificate and any corporate security, stock certificate, bond or note;

(4) A certificate of title or ownership issued by a governmental agency; and

(5) A document of title within the meaning of section 400.1-201, RSMo;

may be held or registered in beneficiary form by including in the name in which the property is held or registered, a direction to transfer the property on death of the owner, or last to die of two or more joint owners, to a person or persons designated by the owner or joint owners as beneficiary.

[¶ 905]

SECTION 5. FORM OF REGISTRATION IN BENEFICIARY FORM. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

COMMENT

The abbreviation POD is included for use without regard for whether the subject is a money claim against an issuer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation. The use of POD in a registration in beneficiary form of shares in an investment company should not be taken as a signal that the investment is to be sold or redeemed on the owner's death so that the sums realized may be "paid" to the death beneficiary. Rather, only a transfer on death, not a liquidation on death, is indicated. The committee would have used only the abbreviation TOD except for the familiarity, rooted in experience with certificates of deposit and other deposit accounts in banks, with the abbreviation POD as signalling a valid nonprobate death benefit or transfer on death.

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

2. Property is registered in beneficiary form by showing on the account record, security certificate or instrument evidencing ownership of the property, the name of the owner or joint owners, and the estate by which two or more owners hold the property with right of survivorship, followed in substance by the words "transfer on death to . . . . (names of beneficiaries)". In lieu of the words "transfer on death to" the words "pay on death to" or the abbreviation "TOD" or "POD" may be used.

3. A transfer on death direction may only be placed on an account record, security certificate or instrument evidencing ownership of property by the transferor or a person authorized by the transferor.

4. A transfer on death direction transfers the owner's or surviving joint owner's interest in the property to the designated beneficiaries who survive, effective on the owner's or surviving joint owner's death, if the property is registered in beneficiary form prior to the death of the owner or last to die of two or more joint owners.

5. An account record, security certificate or instrument evidencing ownership of property, that contains a transfer on death direction designating beneficiaries, written as part of the name in which the property is held or registered, is conclusive evidence in the absence of fraud, duress or undue influence, or evidence of clerical mistake by the transferor or its transfer agent, that the direction was regularly made by the owner or joint owners and accepted by the transferor, and was not revoked or changed prior to the death giving rise to the transfer; and the transferor shall have no obligation to retain the original writing, if any, by which the owner or joint owners cause the account, security or property to be registered in beneficiary form, more than six months after the transferor has mailed or delivered to the owner or owners, at the address shown on the registration, an account statement, certificate or instrument that shows the manner in which the account, security or property is held or registered in beneficiary form.

[¶ 906]

SECTION 6. EFFECT OF REGISTRATION IN BENEFICIARY FORM. The designation of a TOD beneficiary on a registration in beneficiary form

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has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

COMMENT

This section simply affirms the right of a sole owner, or the right of all multiple owners, to end a TOD beneficiary registration without the assent of the beneficiary. The section says nothing about how a TOD beneficiary designation may be canceled, meaning that the registering entity's terms and conditions, if any, may be relevant. See Section 10. If the terms and conditions have nothing on the point, cancellation of a beneficiary designation presumably would be effected by a reregistration showing a different beneficiary or omitting reference to a TOD beneficiary.

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

461.031. Ownership of property in beneficiary form during lifetime and at death.—1. Property that is the subject of a nonprobate transfer, during the lifetime of the owner or joint owners, belongs to the owner or joint owners and the signature or agreement of a beneficiary of the nonprobate transfer shall not be required for any transaction of the owner or joint owners respecting the property.

461.033. Revocation and change of beneficiaries for a nonprobate transfer.—1. Provision for a nonprobate transfer may be revoked in whole or in part and the beneficiaries changed during the lifetime of an owner or surviving joint owner unless it is expressly made irrevocable with consent of any transferor involved. A revocation or change in beneficiaries for a nonprobate transfer involving property of two or more owners may only be made with the agreement of all owners then living.

2. A subsequent beneficiary designation, beneficiary assignment, beneficiary deed or registration in beneficiary form revokes a prior designation of beneficiaries when it becomes effective and it is not necessary to expressly revoke a prior beneficiary designation.

3. A revocation or change in a beneficiary designation shall comply with the terms of any governing instrument and the rules of any transferor involved.

4. A nonprobate transfer may not be revoked by the provisions of a will or by an agent of the owner unless the agreement, instrument or law under which the designation is made expressly grants the owner the right to revoke or change a beneficiary designation in such manner.

5. An attorney in fact, personal custodianm or conservator may not revoke or change survivorship rights of joint owners or the persons named in a beneficiary designation, unless the agreement, instrument or law governing the nonprobate transfer expressly so authorizes or the revocation or change is approved by a court. This provision shall not prohibit the authorized withdrawal, sale, pledge or other present transfer of the property by an attorney in fact, personal custodian or a conservator notwithstanding the fact that the effect of the transaction may be to extinguish a beneficiary's right to receive a transfer of the property at the death of all owners. This provision also does not prohibit an owner or joint owners from giving an agent, attorney in fact or custodian express authority to open an account or register a security or other property in joint names with right of survivorship or in beneficiary form.

6. A conveyance or assignment during the owner's lifetime of the owner's entire interest in property subject to a nonprobate transfer arrangement, with or without consideration, and the loss or destruction of the property, terminates rights under a beneficiary designation and all interest of the beneficiaries in the property and in the proceeds from the property or in any payment or substitute property received by the owner.

[¶ 907]

SECTION 7. OWNERSHIP ON DEATH OF OWNER. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

COMMENT

Even though multiple owners holding in the beneficiary form here authorized hold with right of survivorship, no survivorship rights attend the positions of multiple beneficiaries who become entitled to securities by reason of having survived the sole owner or the last to die of multiple owners. Issuers (and registering entities) who decided to accept registrations in beneficiary form involving more than one primary beneficiary also should provide by rule whether fractional shares will be registered in the names of surviving beneficiaries where the number of shares held by the deceased owner does not divide without remnant among the survivors. If fractional shares are not desired, the

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issuer may wish to provide for sale of odd shares and division of proceeds, for an uneven distribution with the first or last named to receive the odd share, or for other resolution Section 8 deals with whether intermediaries have any obligation to offer beneficiary registrations of any sort; Section 10 enables issuers to adopt terms and conditions controlling the details of applications for registrations they decide to accept and procedures for implementing such registrations after an owner's death.

The reference to surviving, multiple TOD beneficiaries as tenants in common is not intended to suggest that a registration form specifying unequal shares, such as "TOD A (20%), B (30%), C (50%)," would be improper. Though not included in the beneficiary forms described for illustrative purposes in Section 10, the Act enables a registering entity to accept and implement a TOD beneficiary designation like the one just suggested. If offered, such a registration form should be implemented by registering entity terms and conditions providing for disposition of the share of a beneficiary who predeceases the owner when two or more of a group of multiple beneficiaries survive the owner. For example, the terms might direct the share of the predeceased beneficiary to the survivors in the proportion that their original shares bore to each other. Unless unequal shares are specified in a registration in beneficiary form designating multiple beneficiaries, the shares of the beneficiaries would, of course, be equal.

The statement that a security registered in beneficiary form is in the deceased owner's estate when no beneficiary survives the owner is not intended to prevent application of any anti-lapse statute that might direct a nonprobate transfer on death to the surviving issue of a beneficiary who failed to survive the owner. Rather, the statment is intended only to indicate that the registering entity involved should transfer or reregister the security as directed by the decedent's personal representative.

See the Comment to Section 1 regarding the meaning of "survive" for purposes of this Act.

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

**461.031. Ownership of property in beneficiary form during lifetime and at death.—* * *

2. On death of one of two or more joint owners with right of survivorship, the property belongs to the surviving joint owner or owners, and the right of survivorship continues as between two or more surviving joint owners.

3. On death of the sole owner or last to die of two or more joint owners, the property belongs to the surviving beneficiaries in accordance to their priority as primary or contingent beneficiaries, or as substitutes for a nonsurviving beneficiary.

4. If two or more beneficiaries survive, there is no right of survivorship among the beneficiaries in the event of death of a beneficiary thereafter unless the beneficiary designation or the agreement with the transferor expressly provides for survivorship among them, and, unless so expressly provided, surviving beneficiaries hold their separate interests in the property as tenants in common. The share of any subsequently deceased beneficiary belongs to that beneficiary's estate.

5. If no beneficiary or substitute survives all owners, the property belongs to the estate of the owner or the estate of the last to die of two or more joint owners.

[¶ 908]

SECTION 8. PROTECTION OF REGISTERING ENTITY.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this [Act].

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this [Act].

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 7 and does so in good faith reliance (i) on the registration, (ii) on this [Act], and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this [Act] do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary

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form. No other notice or other information available to the registering entity affects its right to protection under this [Act].

(d) The protection provided by this [Act] to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

COMMENT

It is to be noted that the "request" for a registration in beneficiary form may be in any form chosen by a registering entity. The Act does not prescribe a particular form and does not impose recordkeeping requirements. Registering entities' business practices, including any industry standards or rules of transfer agent associations, will control.

The written notice referred to in subsection (c) would qualify as a notice under UCC § 8-403.

"Good faith" as used in this section is intended to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade," as specified in UCC § 2-103(1)(b).

The protections described in this section are designed to meet any questions regarding registering entity protection that may not be foreclosed by issuer protections provided in the Uniform Commercial Code. Because persons interested in this Act may wish to be reminded of relevant UCC provisions, a brief summary follows.

"U.C.C. § 8-403, 'Issuer's Duty as to Adverse Claims' contains detailed provisions regarding duties of inquiry by an issuer of a certificated or uncertificated security who is requested to effect a transfer, and the availability and use of 30 day notices to force adverse claimants to start litigation if further delay in transfer is desired. U.C.C. § 8-201's definition of 'issuer' for purposes of 'registration of transfer . . .' is simply 'a person on whose behalf transfer books are maintained.' U.C.C. § 8-403 is among the sections dealing with registration of transfers.

"U.C.C. sections 8-308 and 8-404(1) appear to exonerate an issuer who acts in response to transfer directions signalled by the 'necessary indorsement' on or with a certificated security or in response to 'an instruction originated by an appropriate person' in the case of an uncertificated security. Section 8-308 describes the meaning of 'appropriate person' in the case of a certificated security as 'the person specified by the certificated security . . . to be entitled to the security.' U.C.C. § 8-308(6) (1978). In the case of an uncertificated security, 'appropriate person' means the 'registered owner.' *Id.* § 8-308(7). The survivor of owners listed as joint tenants with right of survivorship is specifically defined as an authorized person. *Id.* § 8-308(8)(d). The U.C.C. aspect of the problem could be met by an additional sub-paragraph to section 8-308(8) that would include a TOD beneficiary as an 'appropriate person' when the beneficiary has survived the owner.

"No U.C.C. addition would be necessary if a TOD beneficiary designation were viewed as a contingent order for transfer at the owner's death that may be safetly implemented as a direction from the owner as an 'authorized person.' The owner's death before completion of the transfer would not pose U.C.C. problems because section 8-308(10) provides: 'Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by him does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.'

"It might be questioned whether a TOD direction, which may be revoked before it is carried into effect and is also contingent on the beneficiary's survival of the registrant, is within the transfer directions contemplated by the U.C.C. framers for purposes of issuer protection. However, since section 8-202 explicitly protects issuers against problems arising because of restrictions or conditions on transfers, only the novelty of revocable directions for transfer on death gives pause.

"In general, article 8 of the U.C.C. reflects a careful attempt to protect implementation of a wide range of transfer instructions so long as the signatures are genuine and are those of owners acting in conformity with duly imposed rules of the issuer organization. . . . Hence, existing U.C.C. protections should be adequate, . . ." Wellman, Transfer-On-Death Securities Registration: A New Title Form, 21 Ga. L. Rev. 789, 823 n.90 (1987).

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

461.012. Nonprobate transfers subject to agreement of transferor.—Provision for a nonprobate transfer of property, other than real estate, and the transfer of the property, other than real estate, on death of a person is a matter of agreement between the owner and transferor, under such rules, terms and conditions as the owner and transferor may agree. Sections 404.700 to 404.735, RSMo, and sections 461.003 to 461.031 do not impose an obligation on a transferor to accept an owner's request to make provision for a nonprobate transfer of property at death.

461.014. Transfer obligation resulting from acceptance and registration.—When a transferor accepts a beneficiary designation or beneficiary assignment, or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and transferor that, unless the beneficiary designation is revoked or changed prior to the owner's death, on proof of death of the owner, or

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last to die of two or more joint owners, and compliance with the transferor's requirements for showing proof of entitlement, the property will be transferred to and placed in the names and control of the beneficiaries in accordance with the beneficiary designation or transfer on death direction, the agreement of the parties and sections 461.003 to 461.081.

461.065. Transferor protection.—1. The owner in making provision for a nonprobate transfer under sections 461.003 to 461.081 gives to the transferor the protections provided in this section for executing the owner's beneficiary designation or transfer on death direction to make a nonprobate transfer of the owner's property on death to the owner's beneficiaries in accordance with the owner's designation or direction, the agreement of the owner and transferor and sections 461.003 to 461.081.

2. The transferor may rely and act on:

(1) A certified or authenticated copy of a death certificate issued by an official or agency of the place where the death occurred as showing the fact, place, date, time of death and the identity of the decedent; and

(2) A certified or authenticated copy of any report or record of a governmental agency, domestic or foreign, that a person is missing, detained, dead or alive and the dates, circumstances and places disclosed by the record or report.

3. The transferor may rely and act on information in a sworn request submitted under subdivision (12) of section 461.062, for execution of the owner's beneficiary designation or transfer on death direction.

4. The transferor shall have no duty:

(1) To verify information in a sworn request for execution of the owner's beneficiary designation submitted in accordance with subdivision (12) of section 461.062;

(2) To give notice to any person of the date, manner and persons to whom transfer will be made under the owner's beneficiary designation, except as provided in subsection 5 of this section;

(3) To attempt to locate any beneficiary or lineal descendant substitute, or determine whether a nonsurviving beneficiary or descendant had lineal descendants who survived the owner;

(4) To locate a trustee or custodian, obtain appointment of a successor trustee or custodian, or discover the existence of a trust instrument or will that creates an express trust; or

(5) To determine any fact or law that would cause the owner's beneficiary designation to be revoked in whole or in part as to any person because of change in marital status or other reason, or that would qualify or disqualify any person from entitlement to receive a share under the owner's nonprobate transfer, or that would vary the distribution provided in the owner's beneficiary designation or transfer on death direction.

5. (1) The transferor shall have no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless, prior to the transfer, the transferor has received written notice at a place and time and in a manner which affords a reasonable opportunity to act on it before the transfer is made, that:

(a) Asserts a claim of beneficial interest in the transfer adverse to the transfer to be made;

(b) Gives the name of the claimant and an address for communications directed to the claimant;

(c) Identifies the deceased owner and the property to which the claim applies; and

(d) States the amount and nature of the claim as it affects the transfer.

(2) If a notice as provided in subdivision (1) of this subsection is received by the transferor, the transferor may discharge any duty to the owner's estate, the owner's beneficiaries and their descendant substitutes and the claimant, by delivering a notice or sending a notice by certified mail to the claimant and the persons named in a request for transfer under subdivision (12) of section 461.062, at the addresses given in the notice of claim and request for transfer:

(a) Stating what is to be transferred, the persons to whom the transfer will be made and their respective shares; and

(b) Advising that the transfer may be made in thirty days from the date of delivery or mailing unless the transfer is restrained by a court order.

(3) No other notice or other information shown to have been available to the transferor, its transfer agent and their employees, shall affect the right to the protections provided in sections 461.003 to 461.081.

6. The transferor shall have no responsibility for the application or use of the property transferred under an owner's nonprobate transfer to a trustee, custodian or fiduciary and the receipt of the trustee, custodian or fiduciary shall fully discharge the transferor from liability to the owner's estate and the owner's beneficiaries for the transfer.

7. Notwithstanding the protections provided the transferor in sections 461.003 to 461.081, in the event the transferor is uncertain as to the beneficiaries entitled to receive a transfer or their proper share, or in the event of a dispute by a beneficiary or a beneficiary's descendants as to the proper transfer or of claims by creditors of the owner's estate, surviving spouse, children, personal representative, heirs or others, the transferor may require the parties to adjudicate their respective rights or to furnish an indemnity bond protecting the transferor and the rightful beneficiaries for the transfer.

8. A transfer by the transferor in accordance with sections 461.003 to 461.081 and pursuant to the owner's beneficiary designation or transfer on death direction, in good faith and in reliance on sworn information provided the transferor, discharges the transferor from all claims for the amounts paid and the property transferred, whether or not the payment or transfer is consistent with the beneficial ownership thereof as among the owner and other parties, the beneficiaries and their successors.

461.067. Rights of owners and beneficiaries—improper distribution, liability of distributee—purchasers from distributee protected.—1. Any protection provided to a transferor of a nonprobate transfer under sections 461.003 to 461.081 shall have no bearing on the rights of owners or beneficiaries in disputes among themselves or their successors concerning the beneficial ownership of a right to receive a payment of money, forgiveness of a debt or the transfer of property.

[¶ 909]

SECTION 9. NONTESTAMENTARY TRANSFER ON DEATH.

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(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this [Act] and is not testamentary.

(b) This [Act] does not limit the right of creditors of security owners against beneficiaries and other transferees under other laws of this State.

COMMENT

Subsection (a) is comparable to UPC § 6-214 (Rev. 1989). Subsection (b) is similar to UPC § 6-101(b) (Rev. 1989).

Consideration should be given to the desirability of adapting the section as necessary to fit local principles regarding the rights of a surviving spouse to protection against disinheritance by nonprobate transfers effective at death.

LOCAL MODIFICATIONS

.126 **Missouri.** Substitute:

461.009. Nonprobate transfers not subject to requirements of a will.—1. Any transfers resulting from the application of sections 461.003 to 461.081 are effective by reason of sections 461.003 to 461.081 and the agreement of the parties without further consideration, and are not to be considered testamentary or subject to section 473.087, RSMo, and section 474.320, RSMo.

2. The authority of a financial institution or broker who acts as a custodial agent on a self-directed individual retirement account shall not cease at death of the owner, if the owner has named beneficiaries to receive the account on death of the owner. The custodial agent shall make the transfer at death in accordance with the account agreement and sections 461.003 to 461.081.

[¶ 910]

SECTION 10. TERMS, CONDITIONS, AND FORMS FOR REGISTRATION.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

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(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD Jonn S Brown Jr SUB BENE Peter Q Brown *or* John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

COMMENT

Use of "and" or "or" between the names of persons registered as co-owners is unnecessary under the Act and should be discouraged. If used, the two words should have the same meaning insofar as concerns a title form; *i.e.*, that of "and" to indicate that both named persons own the asset.

Descendants of a named beneficiary who take by virtue of a "LDPS" designation appended to a beneficiary's name take as TOD beneficiaries rather than as intestate successors. If no descendant of a predeceased primary beneficiary survives the owner, the security passes as a part of the owner's estate as provided in Section 7.

LOCAL MODIFICATIONS

.126 Missouri. Substitute:

461.062. Nonprobate transfer rules.—A transferor may adopt rules for the making, revocation, acceptance and execution of beneficiary designations and transfer on death directions; and a transferor may adopt the rules in subdivisions (1) to (13) of this section in whole or in part by incorporation by reference. If no separate rules for administration of nonprobate transfers have been adopted by the transferor, the rules in subdivisions (1) to (13) of this section shall apply to beneficiary designations, beneficiary assignments, and property registered in beneficiary form.

(1) A beneficiary designation shall be made in writing, subscribed by the owner or owners, dated, witnessed by at least one person who is not expressly named a beneficiary in the designation and be delivered to the transferor or a person authorized to receive beneficiary designations for a transferor.

(2) A request for registration of property in beneficiary form that is presently registered in the name of the owner or owners shall be made in writing, subscribed by the owner or owners, dated, and witnessed by at least one person who is not expressly named a beneficiary in the registration or, if a security or brokerage account, subscribed by the owner or owners, dated, and submitted with a signature guarantee acceptable to the transferor, and be delivered to the transferor, a transfer agent or a person authorized to receive requests for registration of the security or brokerage account in beneficiary form.

(3) A request for registration of a security in beneficiary form that is not presently registered in the name of the owner may be registered in beneficiary form on instructions given by a broker or a person delivering the security.

(4) The owner may designate one or more primary beneficiaries and one or more contingent beneficiaries in a beneficiary designation or transfer on death direction.

(5) On property registered in beneficiary form, primary beneficiaries are the persons shown immediately following the words "transfer on death" or the abbreviation "TOD" without words indicating that the persons shown are primary beneficiaries. If contingent beneficiaries are designated, their names in the registration shall be preceded by the words "contingent beneficiaries" or an abbreviation thereof.

(6) Unless a percentage share is stated for each beneficiary, surviving multiple primary beneficiaries or multiple contingent beneficiaries share equally. When a percentage share is designated for multiple beneficiaries, either primary or contingent, surviving beneficiaries share in the proportion that their designated shares bear to each other.

(7) Provision for a transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form is expressed in the registration by a number preceding the name of each beneficiary that represents a percentage share of the property to be transferred to that beneficiary. The number representing a percentage share need not be followed by the word "percent" or a percent sign.

(8) A nonprobate transfer of an account, security or other property also transfers any interest, rent, royalties, earnings, dividends or credits earned or declared on the account or security or associated with the property, but not paid or credited before decedent's death.

(9) A nonprobate transfer of a stock certificate or other security also transfers any uncertificated securities in a reinvestment account associated with the registration of that stock or security and any dividends or interest earned or declared on the reinvestment account, but not paid or credited before decedent's death.

(10) If a distribution results in fractional shares in a security or property that is not divisible, the distribution of the fractional shares shall be made in the name of all beneficiaries as tenants in common or as the beneficiaries may direct, or the transferor may sell the security or property, or a part thereof, and distribute the proceeds to the beneficiaries in the proportions to which they are entitled.

(11) On proof of death of a sole owner, or last to die of two or more joint owners, the property, less a setoff for all amounts and charges owing by the owner or surviving owner to transferor, shall be transferred to the surviving beneficiaries, and their lineal descendants when required as substitutes, as follows:

(a) If a single primary beneficiary has been designated, the property shall be transferred to the surviving primary beneficiary;

(b) If multiple primary beneficiaries have been designated, the property shall be transferred to the surviving multiple primary beneficiaries in equal shares or in the percentage share stated in the beneficiary designation or transfer on death direction for each primary beneficiary;

(c) If a multiple primary beneficiary does not survive and has no surviving lineal descendant substitutes, the nonsurviving primary beneficiary's share shall be transferred to the surviving primary beneficiaries in the proportion that their shares bear to each other;

(d) If a single primary beneficiary does not survive and has no surviving lineal descendant substitutes, the nonsurviving primary beneficiary's share shall be transferred to the surviving contingent beneficiaries in equal shares or in the percentage share stated in the beneficiary designation or transfer on death direction for each contingent beneficiary;

(e) If a transferor accepts the designation of multiple primary and multiple contingent beneficiaries, and no primary beneficiary or lineal descendant substitute survives,

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the property shall be transferred to the surviving contingent beneficaries in equal shares or in the percentage share stated in the beneficiary designation or transfer on death direction for each contingent beneficiary;

(f) If a multiple contingent beneficiary does not survive and has no lineal descendant substitutes, the nonsurviving contingent beneficiary's share shall be transferred to the surviving contingent beneficiaries in the proportion that their shares bear to each other;

(g) If there are no primary or contingent beneficiaries who survive the owner's death and no lineal descendant substitutes, the property shall be transferred to the owner's or last surviving owner's estate;

(h) If the trust under which a trustee has been designated as beneficiary does not come into existence on or before the owner's death, or is terminated prior to the owner's death, or if a trustee designated as a beneficiary does not survive the owner, resigns or is unable or unwilling to execute the trust as trustee, and, if within six months of the owner's death no successor trustee has been appointed or has undertaken to act and no trust instrument or probated will creating an express trust has been presented to the transferor, the transferor may in its discretion make the distribution as it would be made if the trust did not survive the owner;

(i) If, within six months of the owner's death, the transferor has not been presented evidence that a nonsurviving beneficiary for whom LDPS distribution applies had lineal descendants who survived the owner, the transferor may in its discretion make the transfer as it would be made if the beneficiary's descendants, if any, did not survive the owner;

(j) If a beneficiary cannot be located at the time the transfer is made to located beneficiaries, the transferor shall hold the missing beneficiary's share. If the missing beneficiary's share is not claimed by the beneficiary or the beneficiary's personal representative or successors within one year of the owner's death, the transferor shall transfer the share to the beneficiary's lineal descendants when required as substitutes and, if none, to the located beneficiaries in the proportion that their shares bear to each other; and, if there are no other located beneficiaries or lineal descendant substitutes who survive, to the owner's estate. The transferor shall have no obligation to attempt to locate a missing beneficiary or lineal descendant substitute, to pay interest on the share held for a missing beneficiary or to invest the missing beneficiary's share in any different property. Cash, interest, rent, royalties, earnings or dividends payable to the missing beneficiary may be held by the transferor at interest or reinvested by the transferor in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary.

(12) A written request under oath for execution of a nonprobate transfer may be made by any beneficiary, beneficiary substitute or the owner's personal representative and shall include:

(a) A surrender of any certificate or instrument evidencing ownership of the contract, account, security or property;

(b) Proof of death of the owner or owners and any nonsurviving beneficiary;

(c) The full name, address and tax identification number of each person who is to receive a distribution under the nonprobate transfer;

(d) The percentage share to be distributed to each person under the nonprobate transfer;

(e) The manner in which fractional shares is nondivisible property or the proceeds therefrom are to be distributed;

(f) An inheritance tax waiver from states that require it;

(g) A statement that there are no known disputes as to the persons entitled to a distribution under the nonprobate transfer or the amounts to be distributed to each person, and no known claims that would affect the distribution requested; and

(h) Such other information and proof of entitlement as the transferor may require.

A request for execution by a personal representative shall be accompanied by a certified copy of the court order appointing the personal representative.

(13) The rights and obligations of the owner or joint owners, beneficiaries and transferor shall be governed by the nonprobate transfers law of Missouri.

[¶ 911]

SECTION 11. SHORT TITLE; RULES OF CONSTRUCTION.

(1) This [Act] shall be known as and may be cited as the Uniform TOD Security Registration Act.

(2) This [Act] shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this [Act] among states enacting it.

(3) Unless displaced by the particular provisions of this [Act], the principles of law and equity supplement its provisions.

LOCAL MODIFICATIONS

.106 Colorado. Omit this section.

.124 Minnesota. Omit this section.

.126 Missouri. Substitute:

461.003. Law, how cited.—Sections 461.003 to 461.081 may be cited as the "Nonprobate Transfers Law of Missouri".

.132 New Mexico. Omit this section.

.135 North Dakota. Omit this section.

.150 Wisconsin. Omit this section.

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[¶ 912]

SECTION 12. APPLICATION OF ACT. This [Act] applies to registrations of securities in beneficiary form made before or after [effective date], by decedents dying on or after [effective date].

LOCAL MODIFICATIONS

.106 Colorado. Insert "July 1, 1990" within the brackets.

.126 Missouri. Substitute:

461.081. Nonprobate transfer laws to be effective when—prior transfers to be valid.—1. Sections 461.003 to 461.081 shall apply to beneficiary designations for nonprobate transfers made on and after August 28, 1989. Sections 461.003 to 461.081 shall apply to all nonprobate transfers occurring on and after January 1, 1990.

2. Any provision for a nonprobate transfer of money, benefits or property at death as now permitted in sections 461.003 to 461.081, purported to have been made before August 28, 1989, is validated notwithstanding that there was no specific statutory authority for making the nonprobate transfer in that manner at the time provision for the nonprobate transfer was made.

.132 New Mexico. Insert "July 1, 1992" within the brackets.

.135 North Dakota. Omit this section.

.138 Oregon. Omit this section.

.150 Wisconsin. Omit this section.

[¶ 913]

Additional Sections Adopted by Enacting States

.124 Minnesota. Add the following:

524.6-3075. Rights of Creditors.—A registration in beneficiary form is not effective against an estate of a deceased sole owner or a deceased last to die of multiple owners to transfer to a beneficiary or beneficiaries sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children, and dependent children, if other assets of the estate are insufficient. A TOD beneficiary in whose name a security is registered after the death of the owner is liable to account to the deceased owner's personal representative for securities so registered or their proceeds to the extent necessary to discharge such claims and charges remaining unpaid after the application of the assets of the decedent's estate. A proceeding to assert this liability may not be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor dependent child of the decedent, and a proceeding may not be commenced later than two years following the death of the decedent. A beneficiary against whom the proceeding is brought may elect to transfer to the personal representative the security registered in the name of the beneficiary after the death of the deceased owner if the beneficiary still owns the security, or the net proceeds received by the beneficiary upon disposition of the security by the beneficiary, and that transfer fully discharges the beneficiary from all liability under this section. Amounts or securities recovered by the personal representative must be administered as part of the deceased owner's estate.

This section does not affect the right of a registering entity to register a security in the name of the beneficiary, or make a registering entity liable to the estate of a deceased owner, except for a reregistration after a registering entity has received written notice from any claimant to an interest in the security objecting to implementation of a registration in beneficiary form.

524.6-3095. Revocation of Beneficiary Designation by Will.—A registration in beneficiary form may be canceled by specific reference to the security or the securities account in the will of the sole owner or the last to die of multiple owners, but the terms of the revocation are not binding on the registering entity unless it has received written notice from any claimant to an interest in the security objecting to implementation of a registration in beneficiary form prior to the registering entity reregistering the security. If the beneficiary designation is canceled, the security belongs to the estate of the deceased sole owner or the estate or the last to die of all multiple owners.

.126 Missouri. Add the following:

461.017. Transfer on death, provisions that are not wills.—Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, stock certificate, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust agreement, declaration of trust, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust or to evidence ownership of property is deemed to be nontestamentary, and exempt from the requirements of section 473.087, RSMo, and section 474.320, RSMo:

(1) That money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after the decedent's death to a person or persons designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand;

(3) That any property which is the subject of the instrument shall pass on decedent's death to a person or persons designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

461.021. Beneficiary designation under written instrument or law, effect.—A beneficiary designation under a written instrument or law, that authorizes a transfer of money, benefits or property pursuant to a written designation of beneficiaries, transfers the right to receive the payment, benefits or property to the designated beneficiaries who survive, effective on death of the owner, or last to die of two or more joint owners, if the beneficiary designation is executed and delivered in proper form to the transferor prior to the death of the owner.

461.023. Assignments effective on death of assignor—delivery, effect.—1. A written assignment of a contract right that assigns the right to receive any perform-

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ance remaining due under the contract to assignee beneficiaries designated by assignor or assignors, that expressly states that the assignment is not to take effect until the death of the assignor or last to die of two or more assignors, transfers the right to receive performance due under the contract to the designated assignee beneficiaries who survive, effective on death of the assignor or last to die of two or more assignors, if the assignment is executed and delivered in proper form to the contract obligor prior to the death of the assignor or last to die of two or more assignors. A beneficiary assignment need not be supported by consideration or be delivered to any assignee beneficiary.

2. This section does not preclude other methods of assignment that are permitted by law and that have the effect of postponing enjoyment of a contract right until the death of the assignor or last to die of two or more assignors.

461.025. Deeds effective on death of grantor—recording, effect.—1. A deed that conveys an interest in real property to grantee beneficiaries designated by the grantor or grantors, that expressly states that the deed is not to take effect until the death of the grantor, or last to die of two or more grantors, transfers the interest provided to the designated grantee beneficiaries who survive, effective on death of the grantor or last to die of two or more grantors, if the deed is executed and filed of record with the recorder of deeds in the city or county or counties in which the real property is situated prior to the death of the grantor or last to die of two or more grantors. A beneficiary deed need not be supported by consideration or be delivered to any grantee beneficiary.

2. This section does not preclude other methods of conveyancing that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the grantor or last to die of two or more grantors. This section does not invalidate any deed, otherwise effective by law to convey title to the interest and estates therein provided, that is not recorded until after the death of grantor or last surviving grantor.

461.036. Effective date of beneficiary designation, revocation or change.—1. A beneficiary designation, revocation or change, under a written instrument or law that authorizes a transfer of money, benefits or property pursuant to a written designation of beneficiaries and a beneficiary assignment of a contract right, is effective when delivered in proper form to the transferor or contract obligor prior to the owner's death, together with any instrument that the transferor may require to be endorsed or surrendered incident to the designation, revocation or change of beneficiaries.

2. A beneficiary deed, or an instrument revoking or changing a beneficiary deed, is effective when recorded.

3. A transfer on death direction, revocation or change for property registered in beneficiary form is effective when delivered in proper form to the transferor or the transferor's transfer agent prior to the owner's death, together with any certificate or instrument that evidences ownership of the property for cancellation and reissue in the form requested.

4. A request to make, revoke or change a beneficiary designation is in proper form when it complies with the requirements of the transferor and any governing instrument, including necessary signatures, witnesses, proof of execution, delivery, acceptance, registration and a surrender of any certificate or instrument evidencing ownership of the contract right, security or other property.

5. When a beneficiary designation, revocation or change is subject to acceptance by a transferor, the transferor's acceptance of the beneficiary designation, revocation or change relates back and is effective when the request was received by the transferor.

461.039. Effect of collateral conveyance, contract or pledge of property subject to nonprobate transfer.—Beneficiaries of a nonprobate transfer take the owner's interest in the property at death subject to amounts and setoffs owing to the transferor and to all conveyances, assignments, contracts, liens and security pledges made by the owner or to which the owner was subject during the owner's lifetime, including the following:

(1) If real property, subject to any executory contract of sale, option to purchase, lease, license, easement, mortgage, deed of trust, or lien, and to any interest conveyed by grantor that is less than all of grantor's interest in the property;

(2) If a contract right, subject to any change in performance or extension in time for performance to which assignor agreed, and subject to any contract to sell, option to purchase, assignment or pledge of the contract right;

(3) If an account, subject to all requests for payment or delivery of securities issued on the account by the owner before death, satisfaction of all debts, loans, pledges, charges, checks, drafts, credit card charges, other payment or delivery directives and any other setoffs owing between the owner and transferor;

(4) If a security, trust interest or other property, subject to satisfaction of any pledge, contract of sale, option to purchase or assignment granted by the owner respecting the security, trust interest or other property.

461.042. Survival required.—1. A beneficiary of a nonprobate transfer, including substitute lineal descendants of a nonsurviving beneficiary when LDPS distribution applies, shall not be entitled to a transfer unless the beneficiary survives the decedent's death as required by subdivision (12) of section 2 of this act.

2. If an owner provides and the transferor accepts, or if a governing instrument or law provides, a period of survival different than one hundred twenty hours, the period designated shall determine the survival requirement of beneficiaries under this section. A beneficiary to take under a survival period must survive and be living immediately after the period provided. If a number of hours or days is designated, the hour or day of the owner's death shall not be counted. An owner and transferor may agree that certain circumstances raise a different presumption of survival or nonsurvival.

3. A legal entity or trust designated as a beneficiary that does not exist, come into existence or have a legal successor in interest at the time of the owner's death will be deemed not to have survived the owner.

4. This section does not apply to survivorship rights of joint owners.

461.045. Lineal descendant substitutes.—1. Whenever a person is designated as beneficiary of a nonprobate transfer who is a lineal descendant of the decedent, the grandparent of the decedent or the lineal descendant of a grandparent of the decedent and the beneficiary is deceased at the time the beneficiary designation is made or does not survive the owner, or is treated as not surviving the owner, the nonsurviving beneficiary's share shall belong to that beneficiary's lineal descendants per stirpes who survive the decedent, to take in place of and in substitution for the nonsurviving beneficiary, the same as the beneficiary would have taken if the beneficiary had survived. This subsection shall not apply to a beneficiary designation with the notation "no LDPS" after a beneficiary's name or other words

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negating an intention to direct the transfer to the lineal descendant substitutes of a nonsurviving beneficiary.

2. A person designating beneficiaries of a nonprobate transfer and a transferor accepting the obligation to execute a nonprobate transfer may agree that the share of any beneficiary not related to the decedent as provided in subsection 1 of this section, and who does not survive the decedent, shall belong to that beneficiary's lineal descendants per stirpes who survive the decedent, by including after the name of the beneficiary the words "and lineal descendants per stirpes" or the abbreviation "LDPS".

3. Lineal descendants, taking as substitutes for a beneficiary of a nonprobate transfer, if they are of the same degree of kinship to the nonsurviving beneficiary, share equally, but if they are of unequal degree, then those of more remote degree take the share of their parent by representation.

4. Whenever a nonprobate transfer is to be made to a beneficiary's lineal descendants per stirpes, or is directed by LDPS following a beneficiary's name to the beneficiary's lineal descendants per stirpes, the property shall belong to such children and more remote lineal descendants of the named beneficiary who survive the decedent, and in such proportions, as would result if the survivors were inheriting personal property of the named beneficiary under the laws of Missouri and the named beneficiary had died more than one hundred twenty hours after the death of the decedent intestate, unmarried and domiciled in Missouri.

5. Whenever a beneficiary of a nonprobate transfer does not survive the decedent and the beneficiary is a person for whom the beneficiary's surviving lineal descendants take as substitutes under subsection 1 or 2 of this section, if there are no lineal descendants of the beneficiary who survive the owner, the beneficiary's share shall belong to the surviving primary or contingent beneficiaries, or to the owner's estate, as would be the case if transfer to the beneficiary's lineal descendants were not required to be considered.

461.048. Disclaimer.—If a surviving beneficiary of a nonprobate transfer, including substituted lineal descendants of a deceased beneficiary, disclaims in whole or in part the nonprobate transfer of property in the manner provided by law, the portion of the transfer disclaimed shall belong and be transferred to the persons who would take the property if the beneficiary or descendant had not survived the decedent; but the possibility that a beneficiary or descendant may disclaim a transfer shall not require any transferor to withhold making the transfer in the normal course of business.

461.051. Marriage dissolution—revocation of transfer to former spouse, exception—transferred then to whom.—1. If, after an owner makes a beneficiary designation in favor of a person who is the owner's spouse, the marriage is dissolved and the owner and that beneficiary are not married to each other at the owner's death, the beneficiary designation in favor of the owner's former spouse is revoked on the date the marriage is dissolved, whether or not the beneficiary designation refers to marital status, and the share of the former spouse shall belong to the owner's surviving spouse and children or their descendant substitutes in equal parts and, if none, to the owner's estate.

2. Subsection 1 of this section does not apply to a beneficiary designation in favor of a spouse that has been made irrevocable or revocable only with the spouse's consent, or that is made after the marriage was dissolved, or that expressly states that marriage dissolution shall not affect the designation of a spouse as beneficiary; nor does subsection 1 of this section apply to a beneficiary designation that is made pursuant to a written agreement between the owner and the owner's spouse or a court order with respect to a property settlement on dissolution of their marriage.

461.054. Disqualification for fraud, duress and undue influence and causing owner's death—proceeding to determine disqualification.—1. A person who is named a beneficiary of a nonprobate transfer by reason of fraud, duress or undue influence, or who causes or participates with another in causing the death of the owner, is disqualified from receiving any benefit of the nonprobate transfer and the disqualified beneficiary's share shall belong to the owner's surviving spouse and children or their descendant substitutes, who are not disqualified by this section, in equal parts and, if none, to the owner's estate for distribution to the distributees of that estate who are not disqualified by this section.

2. On petition of any interested person or the transferor, a civil jury shall determine if the disqualification imposed by this section applies to any person and may relieve any person to whom this section applies from the disqualification imposed as the jury determines justice requires.

461.059. Omitted spouse or child, after-born and after-adopted child—not applicable to multiple party accounts or TOD nonprobate transfers.—1. No spouse or child of the owner, claiming under laws protecting them from unintentional disinheritance by the will of a testator, shall have any interest in property transferred pursuant to the owner's beneficiary designation for a nonprobate transfer, except as provided in subsection 2 of this section.

2. If the owner has a child born or adopted after making a beneficiary designation, the after-born or after-adopted child shall be entitled to receive an equal share of any property transferable to the owner's children under the beneficiary designation, and the property otherwise transferable to the owner's children named in the beneficiary designation or deed shall be reduced in the proportion that their shares bear to each other. If there is no share designated for any of the owner's children, in the event of an after-born or after-adopted child the property shall belong to the owner's surviving spouse and children or their descendant substitutes in equal parts, unless the beneficiary designation provides that the after-born rule shall not apply, or the sole primary beneficiary for the property is the father or mother of the after-born or after-adopted child, in which case the property shall belong solely to the child's parent in accordance with the beneficiary designation. This section does not apply to property registered in beneficiary form.

461.067. Rights of owners and beneficiaries—improper distribution, liability of distributee—purchasers from distributee protected.—2. Unless the payment or transfer can no longer be questioned because of adjudication, estoppel or limitations, a transferee of money or property pursuant to a nonprobate transfer that was improperly distributed or paid, is liable to return to the transferor or deliver to the rightful transferees the money or property improperly received and the income earned thereon by the transferee. If the transferee does not have the property, then the transferee is liable to return the value of the property as of the date of disposition, and the income and gain received by the transferee from the property and its proceeds.

3. A purchaser for value of improperly transferred property or a lender who acquires a security interest in the property takes the property free of any claims or liability in absence of actual knowledge of the improper transfer and has no duty to inquire as to whether the transfer was proper.

4. A nonprobate transfer that is improper because of the application of sections 461.045 to 461.059 shall impose no

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liability on the transferor if made honestly in good faith, regardless of any negligence in determining the proper transferees. The remedy of the rightful transferees shall be limited to an action against the improper transferees.

461.071. Rights of creditors.—1. If a deceased owner's probate estate is not sufficient to pay claims, taxes and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children, the beneficiaries that receive a nonprobate transfer of decedent's property under sections 461.003 to 461.081 and the persons who receive other property of the decedent by a transfer other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts during the decedent's lifetime, shall be liable to account to the decedent's personal representative for a pro rata share of the value received or forgiven of property that the decedent owned beneficially immediately before death to the extent necessary to discharge the claims and charges remaining unpaid after application of the funds and property in the decedent's estate. This subsection shall not apply to a death benefit paid pursuant to a life or accidental death insurance policy, contract, trust, plan or law; and it does not apply to survivorship rights in property held as tenants by the entireties.

2. Only decedent's personal representative may enforce the obligation of decedent's beneficiaries under subsection 1 of this section by bringing an action for accounting, but no proceeding to assert this liability shall be commenced unless the personal representative has received a written demand therefor by a creditor, surviving spouse or one acting for a minor or dependent child of the deceased owner, and no proceeding shall be brought for accounting under this section more than two years following the decedent's death. Sums recovered by the personal representative shall be administered as part of the decedent's estate.

3. After an action for accounting has been commenced under this section, any party to the proceeding may join and bring into the action for accounting beneficiaries of other nonprobate transfers of the decedent, persons subject to a similar proceeding for multiple-party accounts held in financial institutions, and persons who succeed to property not subject to probate administration that was subject to satisfaction of the decedent's debts during the decedent's lifetime, including decedent's interest in property distributed at decedent's death by a trustee of a revocable trust or a trust under which the decedent had a right to appoint trust principal to himself, the decedent's estate, the decedent's creditors or the creditors of decedent's estate, property held for decedent by a personal custodian and property held as a joint tenant with rights of survivorship, but only to the extent of decedent's contribution to the value of the joint property.

4. This section shall not affect the right of any transferor to execute a direction of the decedent to make a payment or to make a nonprobate transfer on death of the decedent, or to make the transferor liable to the decedent's estate, unless before the payment or transfer, the transferor has been served with process in a proceeding brought by the decedent's personal representative and the transferor has had a reasonable time to act on it.

461.076. Jurisdiction of probate division of circuit court.—The probate division of the circuit court may hear and determine questions and issue appropriate orders concerning the determination of the surviving beneficiaries, or their lineal descendant substitutes, who are entitled to receive a nonprobate transfer, the proper share of each beneficiary and substitute, and any accounting from the beneficiaries or substitutes for amounts necessary to pay claims, taxes and expenses of administration of the decedent's estate or to obtain the return of any money or property, or its value and earnings, improperly distributed to any person.

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Senate Financial Institutions & Insurance Committee

Senator Bond, Chairperson

TESTIMONY on S.B. 104

February 1993

Gary Sherrer, Senior Vice President
FOURTH FINANCIAL CORPORATION

Mr. Chairman and members of the Committee:

Fourth Financial Corporation is a publicly held corporation owned by nearly 5,000 shareholders, most of whom are Kansas residents. It's primary subsidiaries are BANK IV Kansas and BANK IV Oklahoma. We employ more than 2,600 Kansans with a payroll of nearly $56 million. We serve 31 Kansas communities throughout the state.

We at BANK IV Kansas find ourselves in a unique situation. We are the only Kansas Corporation restricted in our ability to grow through intra state acquisition by Kansas law. With the current deposit limitation, you are in effect mandating we take our investment capital out of Kansas to neighboring states. There is some irony in the fact that some in this room who oppose S.B. 104 are those who opposed interstate banking because it might take investment capital out of Kansas. They now will support the status quo which mandates acquisition dollars to other states.

The law we are dealing with was first drafted in 1983 with the introduction of multi-bank holding company legislation, which was passed in 1985. The amount was changed from 9% to 12% in 1990 with strong voting margins in both houses. We are here to visit the issue again as economics are dynamic and economic forces often demand change in existing law.

There were factors unforseen when the law was enacted that have impacted the deposit limit numbers. The first element was the collapse of a significant sector of the Kansas Savings and Loan industry. BANK IV acquired more than $1 billion in deposits of failed S&L's. This dramatically accelerated the BANK IV growth but not in bank acquisitions. It is interesting to note that if the S&L failures had occurred after BANK IV had reached the deposit limitation, we could have added a billion dollars to our deposit base. In other words, the state public policy allows a bank to acquire beyond the deposit cap if it acquires troubled or failed institutions.

A second factor is the "declining denominator." As exhibit "A" indicates, we have a shrinking deposit base. Between 9/91 and 9/92, the base declined more then $1.2 billion dollars. As a result, Fourth Financial Corporation is nearing the limit and during 1993 it is anticipated we will not be permitted additional Kansas acquisitions.

Thus, we are in a situation in which by law we will not be permitted to invest our acquisition dollars in Kansas and in fact will be required by state law to invest in other states as we grow through acquisition. Exhibit "B" shows the relative size of bank holding companies in the states named in the Kansas Interstate Banking Law.

It is relevant to review how other states deal with the issue of a deposit limitation.

Senate FI&I 2/4/93
Attachment #3

Based on information provided by the Conference of State Bank Supervisors, Exhibit "B" indicates that only 15 of the 50 states have enacted a deposit limitation law. Of these 15, Kansas is third from the bottom and there are only 2 states in the nation more restrictive than Kansas. It should be noted that Kansas carries no exemptions whereas other states exempt such items as deposits over $100,000, failed savings and loan purchases and correspondent bank deposits. Thus Kansas is even more restrictive than even the %'s would suggest.

If a deposit limitation is essential to control banking growth what has happened in those states that have no such limitation. Exhibit "D" provides a look at large and small states around the nation. It is clear that the free market works well. To not provide relief from the 12% limitation because of fear of the unknown makes no sense in light of the experience of these states.

Why is a restrictive deposit cap not necessary? There are a number of reasons, but the most obvious are the competitive free market with numerous banks and limited investment capital along with regulatory agencies and anti-trust laws. We can endlessly argue economic theory but the economic facts are that states without deposit limitation have diversity of banking, have not suffered economically and serve the banking consumer well.

We are not advocating a cutting edge economic experiment with this legislation, we only ask that of the minority of states that have enacted deposit limitation legislation, Kansas be average.

As you deliberate, please consider these questions.

- How is the Kansas economy served by this law?
- How is the Kansas consumer benefitted by allowing large Missouri banks to acquire Kansas banks but not a Kansas corporation that has demonstrated its Kansas commitment?
- How is Kansas banking strengthened by allowing competing states to enhance and strengthen their banking systems beyond what is allowed in Kansas??
- How is it consistent to want BANK IV to remain independent and then maintain a law to make it weaker than its competitors?
- How fair is it to restrict banks but not savings and loans in their future growth opportunities?
- Why should we accept the theory that big is inherently bad?
- Where is the empirical evidence that raising the deposit limitation to the average of the other 14 states brings economic danger?

Those that will appear in opposition will provide you some interesting arguments. The Kansas Bankers Association will provide you the results of what our competitors feel about our growth restrictions. It is a poll in which while we serve nearly 12% of the depositors dollars, we receive one vote, the same as the smallest bank in Kansas. It is a poll in which not one word regarding the facts of this issue, no analysis of deposit limitation legislation and no pro and con argument summary was provided or discussed.

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A poll in which out of state bank holding companies voting influence was 25 times that of BANK IV. A poll in which those who favored raising of the deposit cap, those who were neutral and those who didn't care enough to vote constitute about 50% of the membership. Hardly a mandate for opposition to S.B. 104.

Others you will hear from have a sincerity and consistency in their arguments, which we admire. The members of the Community Bankers Association have been strong advocates of limited banking structure and size. While we appreciate their philosophical consistency, we again differ with them. We have been advocates of structure changes that have proven to serve well all areas and consumers of the state.

We believe the issue before you is straight forward. Should the public policy of this state restrict a Kansas Corporation from investment in Kansas? 48 states would provide BANK IV that opportunity in their states. Is there compelling factual evidence that demands we continue the 12% limitation? We don't believe such evidence exists, and we respectfully ask the legislature that imposed this limitation to provide Fourth Financial Corporation relief from it.

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DEPOSIT CAP TREND – 12%
(in millions)

	9/90	12/90	3/91	6/91	9/91	12/91	3/92	6/92	9/92	12/92
DEPOSITS OF KANSAS BASED S&Ls	$11,062	$10,257	$10,164	$10,102	$9,650	$9,481	$9,315	$8,900	$8,406	
DEPOSITS OF KANSAS BANKS	25,121	26,311	25,718	25,537	25,469	25,904	25,826	25,496	25,367	
KANSAS INSTITUTIONS	36,183	36,568	35,882	35,639	35,119	35,385	35,141	34,396	33,773	
KANSAS DEPOSITS OF FOREIGN S&Ls	777	988	988	988	1,108	1,215	1,215	1,215	1,215	
TOTAL DEPOSITS	$36,960	$37,556	$36,870	$36,627	$36,227	$36,600	$36,356	$35,611	$34,988	
12% DEPOSIT CAP	$4,435	$4,507	$4,424	$4,395	$4,347	$4,392	$4,363	$4,273	**4,199**	
BANK IV KANSAS DEPOSITS	$3,479	$3,671	$3,740	$3,686	$3,593	$3,605	$3,531	$3,418	$3,516	$3,795
ACQUISITION ACTIVITY (KANSAS DEALS ONLY):										
SOUTHGATE BANK – PRAIRIE VILLAGE										62
F&M DERBY										57
FFC CONSOLIDATED DEPOSITS ADJUSTED FOR ACQUISITION ACTIVITY										**$3,914**
DEPOSIT CAP GAP										**$285**

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Ex. 3-4

States with Restrictions on Acquisitions

December 31, 1991

State	% of Deposits
New Mexico	40%
Colorado	25% (out of state holding co.)
Texas	25%
New Hampshire	20%
Ohio	20%
West Virginia	20%
Mississippi	19%
Tennessee	16.5%
Arkansas	15%
Kentucky	15%
Nebraska	14%
Missouri	13%
Kansas	12%
Oklahoma	11%
Iowa	10%

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Four Largest Bank Holding Companies (By Deposits) 9/92

Arkansas

Worthen Banking Corporation	$2,389,420
First Commercial Corporation	2,313,626
Arvest Bank Group, Inc.	943,273
Tcbankshares, Inc.	938,355

Colorado

Colorado National Bankshares	2,718,853
Affiliated Bankshares of CO	2,415,363
Central Bancorporation, Inc.	2,145,636
Firstbank Holding Company	1,320,102

Iowa

Hawkeye Bancorporation	1,243,122
Brenton Banks Inc.	1,137,302
Iowa National Bankshares	773,113
Ruan Financial Corporation	458,342

Missouri

Boatmen's Bancshares, Inc.	15,241,955
Mercantile Bancorp., Inc.	7,358,817
Commerce Bancshares, Inc.	6,099,374
Ameribanc, Inc.	4,238,105

Nebraska

First National Nebraska	2,608,581
Firstier Financial, Inc.	2,326,443
First commerce Bancshares	1,138,102
American National Corp.	322,366

Oklahoma

Liberty Bancorp, Inc.	1,824,517
BOK Financial Corporation	1,668,504
Bancfirst Corporation	631,966
F&M Bancorporation	492,964

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Top 4 Financial Institutions by a Geographical Sample of States Without Deposit Limitations Ranked as a Percent of Total Bank and S&L Deposits as of June 30, 1991

California	
Bank of America	13.20%
Wells Fargo	9.80
Security Pacific	8.68
First Interstate	3.56
Ohio	
National City Corp.	10.75%
Bank One	9.51
Society Corp.	7.74
Huntington Bancshares	5.45
Louisiana	
Hibernia	13.43%
First Commercial Corp.	9.73
Premier Bankcorp	8.59
Whitney H.C.	6.03
North Carolina	
Wachovia	15.67%
First Union	15.64
NCNB	12.50
BB&T Fin. Corp.	5.40

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Washington

Bank America	18.76%
Security Pacific	12.72
US Bank Corp.	9.09
Washington Mutual Savings Bank	7.64

Indiana

Banc One	8.70%
INB Financial Corp.	8.39
Merchants National	7.57
Summcorp	3.57

Minnesota

Norwest	20.49%
First Bank Systems	17.55
Bank Shares	4.22
Jacob Schmidt Co.	2.22

New York

Citicorp	11.03%
Chase Manhattan	9.07
Chemical Banking Corp.	6.95
Manufacturers Hanover Corp.	6.19

Florida

Barnett	15.09%
Suntrust	8.03
First Union Corp.	6.89
NCNB	5.55

Source: BranchSource/Financial Institution Branch Analysis Systems, Ferguson & Company, July 1992..

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The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 4, 1993

TO: Senate Committee on Financial Institutions and Insurance
RE: SB 104 - Deposit Limits for Bank Holding Companies

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear on **SB 104** which would increase the deposit limitation for bank holding companies from 12% to 18%. This issue has been discussed by the State Affairs Committee of the KBA at some length and that committee recommended that the KBA take a position of neutrality on this issue, but also recognize that a member bank has a problem which should be addressed.

After reviewing the recommendation, the officers of the KBA recommended to the KBA Governing Council, which is the top policy-making body of our association, that KBA inform the Legislature there was no consensus among our membership on this issue and therefore the KBA would maintain a neutral position during consideration of any measure on this issue.

In a special telephone conference subsequent to the officers' recommendation the KBA Governing Council voted to poll all Kansas banks on the deposit cap issue. A copy of that poll is attached along with the results of the polling through February 3rd. As committee members can see, 57% of the member banks have responded to date and 69% are recommending that KBA oppose legislation which would increase the deposit cap while only 20% are recommending KBA support legislation such as **SB 104**. While we are still awaiting responses from over 200 banks we have no reason to believe the percentages of support or opposition will change significantly when these responses are received. The members of the KBA Governing Council were contacted again yesterday to affirm that the results of the poll place the KBA officially in opposition to **SB 104**.

Again, we appreciate the opportunity to discuss this issue with the committee and we will be pleased to answer any questions or provide additional information if needed.

James S. Maag
Senior Vice President

Senate F I + I 2/4/93
Attachment # 4

Office of Executive Vice President • 1500 Merchants National Building
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Kansas Bankers Association
February 3, 1993

Please FAX to 913-232-3484 or mail to 800 S.W. Jackson, Suite 1500; Topeka, KS 66612

ALL-BANK SURVEY ON DEPOSIT LIMITATIONS

Results as of 2/3/93

56 (20%) ____ I vote for the KBA TO SUPPORT legislation which would increase the present 12% deposit cap on any bank holding company in Kansas.

197 (69%) ____ I vote for the KBA TO OPPOSE legislation which would increase the present 12% deposit cap on any bank holding company in Kansas.

32 (11%) ____ I vote for the KBA to TAKE NO POSITION on the issue of deposit caps.

_____ Name of Banker

_____ Name of Bank

_____ City

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SB 104: BANK OWNERSHIP LIMITATIONS

BY: CLARK P. YOUNG

February 4, 1993

Chairperson Bond, members of the committee, honored guests and visitors, it is an honor and a pleasure to appear before you and express opposition to the "deposit cap" limitations bill. My name is Clark P. Young. I am a licensed practicing attorney in Kansas and president of the Citizens State Bank of Hugoton in southwest Kansas.

Even though I am from Hugoton, I am not a secessionist. I have always voted in opposition to seceding from my native state of Kansas and will continue to do so. However, I do share something in common with the secessionists and probably most of the people of this great state.

I am forever committed to maintaining local control of our communities and their local funds across this state. To this end, I will endeavor.

Our bank is a proud member of the Kansas Bankers Association and the Community Bankers Association and I am here today to represent the Community Bankers Association and express our opposition to SB 104.

A poll was recently taken by the Community Bankers Association of our 156 members as to whether they favor or oppose legislation raising the cap on deposits that any one bank holding company can control. Of the members who replied, 83% indicated that they opposed any such increase in the amount of deposits a single bank can control.

Senate FI+I 2/4/93
Attachment # 5

WHY? WHY IS IT NECESSARY TO HAVE CONCERN OVER ANY BANK'S OR BANK-HOLDING COMPANIES' CONTROL OVER THE HARD-EARNED BANK DEPOSITS OF KANSAS? BECAUSE CONTROL OVER THE DEPOSITS OF THE STATE OF KANSAS MEANS CONTROL OVER KANSAS RESOURCES AND THE ECONOMY OF KANSAS.

Past legislatures of Kansas, as well as several other states have considered this matter and have seen fit to establish a cap on deposits that any one bank can control. KSA 9-520 specifically sets the limit at 12%. The former legislature believed this was in the best interests of Kansas banks and a safeguard for the people of Kansas.

Similarly, KSA 9-1104 limits the amount of funds any one bank can loan to any one certain entity to, with few exceptions, 15% of the capital and unimpaired surplus of the bank. This statute too was drafted for the purpose of protecting and maintaining stability of both Kansas banks and the people of Kansas. Both statutes have served their purpose well and act as security for the Kansas economy.

It is important to maintain a limit like the 12% cap on deposits in order to keep any one bank from controlling a disproportionate share of deposits just as it is to limit any one bank from concentrating too much of its capital with any one entity. Concentrations of the deposit base should never be raised to the point where any one bank has undue influence or excessive control over the flow of those deposits from one part of the state to another or

out-of-state. This is true mainly because where Kansas money goes, so do Kansas jobs and productivity. If a community loses its bank deposits, it suffers the greatest defeat to that community's vitality and existence.

We have been promised by the large banks that interstate banking would be beneficial by allowing out-of-state banks to purchase Kansas banks. This would increase competition with more players on the field we were told.

Unfortunately, those promises have proved to be untrue as we've seen the number of banks decrease across the state by acquisitions. Increase competition? Try decreased competition. And who loses? The people of Kansas do. IT IS A DISSERVICE TO THE PEOPLE OF KANSAS WHEN ANY ONE GROUP GATHERS CONCENTRATED CONTROL OF KANSAS DEPOSITS IN ORDER TO MANIPULATE THOSE FUNDS THROUGH CENTRALIZED DECISION MAKING.

IT IS INTERESTING TO NOTE THAT THE HOLDING COMPANY ASKING FOR THIS INCREASE HAS GROWN NOT BY NATURAL GROWTH OF BUSINESS BUT PRIMARILY BY CONTINUED ACQUISITIONS. THIS MAKES FEWER AND FEWER BANKS MEANS LESS COMPETITION. LESS COMPETITION TRANSLATES TO FEWER CHOICES FOR THE CONSUMER.

We've already experienced a drop in the number of banks in Kansas over the last several years. Having fewer banks is not necessarily better. In a Business Week article of

August 17, 1992, a Federal Reserve study concluded that "past bank mergers haven't produced the efficiency gains promised by the dealmakers...the average bank merger in the 1980's didn't cut costs, didn't raise productivity, and actually made the combined bank slightly less profitable." "We all believe that consolidation ought to work," says a Federal Reserve official, "but that hasn't been supported by the numbers yet."

In a January 27th, 1992, issue of The Nation, the article entitled "Bank Mergers are Taxing Consumers" states "The bigger banks are worse for consumers because they generally charge more and pay less...Every year the (Consumer Bank) Scorecard finds that big commercial banks are by far the costliest for consumers.

So who are you actually helping by raising the deposit cap on Kansas banks? Certainly not the lower- and middle-income people of Kansas. Certainly not the smaller banks of Kansas. The Community Bankers Association poll shows these bankers overwhelmingly oppose such legislation. I imagine you will be helping only the stockholders and management of one large bank.

In a recent article in the Wichita Business Journal on January 15, 1993, Bank IV announced that it was dropping correspondent data-processing services for correspondent banks. A senior vice president was quoted as saying this decision was done as "a step toward focusing the limited resources of Bank IV. You don't need to be Albert Einstein to figure out we're growing a lot around here."

If Bank IV is concerned about growing, then I say, let them grow. Let them continue acquiring banks in our neighboring states. The current Kansas law allows for reciprocal interstate banking. Let them continue to grow, but not at the expense of the Kansas economy and its depositors.

Other states (like Arizona) have tried banking with little or no deposit caps and now find their largest banks controlled by outsiders in other states. Is our state willing to make the same mistake? Do you or your constituents want your bank controlled by a bank far away?

I urge you to maintain the cap at 12%. The future of Kansas banking is in your hands. Think carefully about who will benefit and who will not by the passage of SB 104.

(S/SB104ltr)

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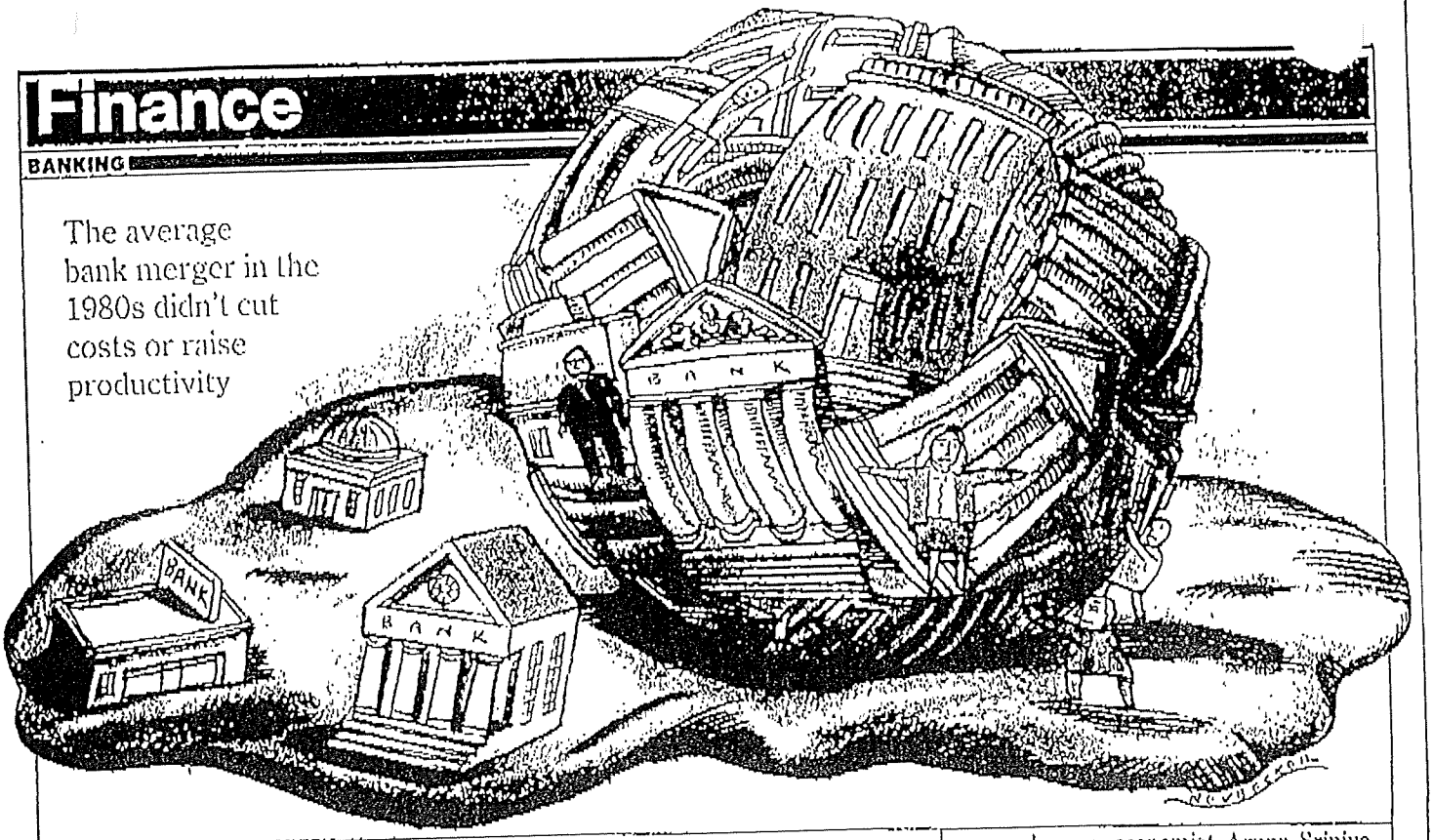
The average bank merger in the 1980s didn't cut costs or raise productivity



ARE FEWER BANKS BETTER?

Not necessarily. Doubts about consolidation are growing

First it was REITs. Then loans to Latin American governments. Then commercial real estate. Now, the buzzword among America's fad-ridden big banks is "consolidation." Bankers see mergers, especially combinations of banks with shared markets, as the key to making the industry stronger, more efficient, and better able to fight domestic and foreign competitors. And bankers have gone at consolidation with a vengeance. In 1991, banks announced more than 500 mergers, capped by three megadeals involving $443 billion in assets.

While the merger boom, unlike the industry's lending fads of the recent past, won't bring the banking system to its knees, it may fall far short of solving banking's troubles. Washington's top regulators are cheering consolidation on, but their research staffs report that past mergers haven't produced the efficiency gains promised by the dealmakers. The economists' findings: The average bank merger in the 1980s didn't cut costs, didn't raise productivity, and actually made the combined bank slightly less profitable. "We all believe that consolidation ought to work," says a Federal Reserve official, "but that hasn't been supported by the numbers yet."

Those disappointing numbers are contained in two recent Fed studies, which challenge the conventional wisdom in the industry that mergers make economic sense. In one, economist Aruna Srinivasan of the Atlanta Fed followed all bank mergers from 1982 through 1986—a period when many states opened their doors to out-of-state banks. In the four years after the deals were consummated, Srinivasan found, noninterest expenses, mostly salaries and other overhead costs, fell by 4.8% in merged banks. But those savings were easily matched by banks that remained independent. The reason: Savings on salaries and branch costs in the merged banks were offset by increases in such expenses as advertising and amortization of goodwill acquired in the takeover.

ASSUMPTIONS BELIED. A similar study by economists Allen N. Berger of the Fed's Washington staff and David B. Humphrey of Florida State University concluded that mergers didn't lead to bigger and better banks. After focusing on 114 deals during the 1980s involving banks with $1 billion or more in assets, the study found that big mergers "were about a wash" for cost savings and "slightly negative" for the merged banks' profits, says Humphrey.

Both Fed studies undercut another cherished theory of pro-merger bankers:

WHY BANK MERGERS DON'T MAKE MUCH ECONOMIC SENSE

1 EFFICIENCIES ARE HARD TO COME BY Banks that merged in the '80s showed no significant gains in operating efficiency. Fed researchers say the industry would gain more by improving operations at inefficient banks than by combining banks to cut overlap and costs

2 BENEFITS ARE TOUGH TO PREDICT Fed researchers found that even efficient banks had a hard time generating cost savings after buying another bank. Eliminating market overlap through mergers didn't produce bigger savings, either

3 BIGGER DOESN'T MEAN BETTER Banks "don't get more efficient as they get larger. The big banks that are now merging are already larger than the most cost-efficient size," say researchers

DATA: FEDERAL RESERVE

ROBERT NEUMECKER

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that merging banks with overlapping markets would yield bigger cost savings, as the combined bank closed redundant branches and back-office operations. While Srinivasan found slightly better gains for banks serving roughly the same market, Berger and Humphrey couldn't find any correlation between the degree of market overlap and success at cutting costs. An unpublished Fed study also casts doubt on the savings potential of branch closings. Completing every possible in-state, big-bank merger and closing half the overlapping branches would eliminate only 2.7% of the nation's 58,603 bank offices, researchers found.

The economists' results have spurred a counterattack by bankers and the consultants who broker mergers. "The academics are looking at an era when banks were interested in expansion, not efficiency," says H. Rodgin Cohen, a New York banking attorney. In the rush to leap over state lines, many banks paid high prices, then failed to follow through with cost-cutting. Analysts point to the defunct Bank of New England Corp. as an example of '80s-style agglomeration. After New England states approved regionwide banking, BNE swallowed 32 banks. But the bank never could keep up with the acquisition binge. Back-office operations remained independent. BNE even ran seven different systems for recording deposits.

SHARED MARKETS. Bankers, consultants, and regulators argue that the industry is more focused nowadays on cutting costs and filling in gaps in banks' markets to get the best return on overhead. Last year's big dealmakers claim to be meeting ambitious savings goals. BankAmerica Corp. has cut 3,700 jobs since it took over Security Pacific Corp. in April, even before starting to close excess branches. Chemical Banking Corp. says it has reduced its payroll by 4,500 since announcing its merger with Manufacturers Hanover Corp. last year.

Even so, many banks that have remained independent are racking up similar cost savings. For example, analysts expect Midlantic Corp. in Edison, N.J., to reduce operating costs by $100 million, thanks in part to staff reductions. But regulators see another benefit to consolidation: "You've got to have something major—a takeover or a big threat of one—to shake most of these bankers out of their complacency," says a top Fed official. That psychological boost—and the chance that it can force efficiencies banks have resisted for decades—is enough for officials. They're willing to bet that the merger boom will be more than just another banking fad.

By Mike McNamee in Washington, with Zachary Schiller in Cleveland, Geoffrey Smith in Boston and bureau reports

REGULATIONS

PINNING THE BLAME ON WALL STREET'S LAWYERS

The securities bar braces for a possible SEC charge in Salomon's scandal

Remember Donald M. Feuerstein? He was the general counsel of Salomon Inc. who left in the wake of the August, 1991, government-bond auction scandal—along with four other Salomon executives, including CEO John H. Gutfreund. So far, the Securities & Exchange Commission has not charged any of the Salomon five.

But it now appears that the SEC is getting ready to move—in a way that has the securities industry all riled up. Feuerstein may be hit with a charge normally reserved for line managers: "The SEC seems to be doing what it can to bring 'failure to supervise' charges against Don Feuerstein," says Robert I. Kleinberg, who heads the Legal & Compliance Div. of the Securities Industry Assn. (SIA) and is general counsel at Oppenheimer & Co. "It's a bum rap to be considered a supervisor when you are a professional legal adviser." The SEC declined to comment.

Says Harvey L. Pitt, Feuerstein's attorney and a former SEC general counsel: "While the SEC was certainly considering the issue of whether a lawyer could be charged with the failure to supervise... to my knowledge, no decisions have been made to charge Feuerstein with a failure to supervise."

KEEPING MUM. At issue is whether Feuerstein, as the in-house lawyer, should have acted more aggressively after he learned in April, 1991, that top trader Paul W. Mozer had been submitting false bond bids. While he persistently advised senior management to report the problem, it was August before the firm informed the SEC. Many experts believe Feuerstein should also have told Salomon's board about Mozer's impropriety as soon as it became clear management had not reported it promptly.

The SEC has begun to pin more blame on lawyers and accountants. Last year, for example, the agency charged an accounting firm with conflict of interest. And early this year, the agency held First Albany Corp.'s general counsel responsible for a broker's misconduct for failing to oversee the broker's trading activity adequately. Without admitting liability, the charges were settled (table).

Even though it is still uncertain whether his client will be charged at all, Pitt has been busy rallying industry support. Several weeks ago, he asked the SIA Legal & Compliance Div., made up of general counsels of many Wall Street firms, to sign a letter to the SEC in support of Feuerstein by raising general concerns about going after lawyers.

The SIA division declined to sign Pitt's letter because it wasn't in a position to judge the facts of Feuerstein's case. Instead, on Aug. 5 it sent its own letter to the SEC, voicing alarm at the move toward blaming supervisory lapses on compliance people. It argued that supervision is the role of executives who have authority to "hire, fire, reward, promote, and demote the people who report to them." A general counsel has no such authority over employees. "For the SEC to jeopardize the contribution of these allies and mislabel them 'supervisors' flies in the face of reality and threatens to undermine... a devoted group of people who carry your message to Wall Street every day," concludes the letter.

Pitt has succeeded in eliciting an emotional plea from the industry. But it might backfire. The SEC could get tough with Feuerstein to make a point to Wall Street: Give your lawyers and compliance departments more muscle.

By Leah Nathans Spiro and Michele Galen in New York, with Dean Foust in Washington

FIRST THE ACCOUNTANTS, NOW THE LAWYERS?

- In June, 1991, the SEC charged Ernst & Young with conflict of interest because Ernst partners borrowed $21.8 million from its client RepublicBank on favorable terms. Ernst & Young disputes the charges
- In March, 1992, the SEC found First Albany's general counsel failed to supervise a broker by not making adequate inquiries into unauthorized trades. The charges were settled
- The SEC is considering bringing 'failure to supervise' charges against Donald Feuerstein, Salomon's former general counsel

DATA: SW

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ARTICLES. THE NATION, Jan 27, 1992

SURVIVAL OF THE FATTEST?

Bank Mergers Are Taxing Consumers

MARK GREEN AND GLENN VON NOSTITZ

In a year that saw the three largest bank mergers in U.S. history, and in the same month that saw the President and Congress's on-again, off-again effort to cut astronomical credit card rates, Citibank, the nation's biggest bank, took two unprecedented steps: It halved its checking account interest to a miserly 2 percent and created a $50 annual "account administration fee" for processing Keogh accounts. So while Citibank pays 2 percent on its checking balances, it charges 19.8 percent on unpaid credit card balances.

Welcome to consumer banking in an era of 20 percent commercial real estate loan default rates. Taxing consumers by higher fees, higher borrowing rates and lower earnings on deposits is now the favored prescription for bailing out a banking system reeling from two decades of disastrous Third World and commercial loans [see Herman Gold, "Gorge Big Banks, Starve Customers," December 23]. And because bank mergers are reducing competition, banks are getting away with milking consumers to subsidize their own mismanagement.

Banks are inflicting on consumers the death of a thousand cuts: A few fee increases here and lower certificate of deposit (C.D.) rates there and pretty soon it adds up to real money. Lower- and middle-income customers at most large commercial banks end up actually losing money because fees charged them exceed the interest they earn.

Many of the same bankers who exercised poor judgment when handing out loans to build shopping malls and hotels that no one needed have shown great ingenuity in devising new ways to pass the buck to consumers. A few examples:

§ charging credit card "late fees" and "overlimit" fees, a practice that is tantamount to charging interest on interest and that produces $1.1 billion in revenue annually

§ using a 365-day year instead of a 360-day year to compound interest earnings

§ charging a fee for each day an account is overdrawn, such as the $3 daily fee at First Chicago

§ charging a dollar for using a once-free automatic teller machine

§ charging penalties as high as $10 for accidentally writing more than the limit of three checks a month on a money-market-rate account

Of course, most of the mounting bank-fee revenue comes from simply raising existing charges far higher than the inflation rate. Not long ago, major commercial banks such as Manufacturers Hanover in New York City typically required only a $1,500 balance in a checking-with-interest account to avoid monthly fees of a few dollars; now the minimum balance is $5,000, the monthly fee is $12 and 50 cents is charged for each check written. And such fee hikes do not come in small increments; at Chase Manhattan the basic passbook savings account, traditional refuge of small depositors and senior citizens, now requires a $1,000 balance to avoid fees, up from $500 last year, and the fee just doubled as well.

Are banks generously returning some of this extra revenue to their loyal depositors? Don't count on it. In a throwback to the 1950s, on December 19 the savings account rate offered by Citibank FSB of Chicago fell from 4.34 percent to a nostalgic 3.15 percent, the lowest in the country. And consumers are suffering rate shock when they roll over their C.D.s; by mid-December one-year C.D. rates had plummeted 47 percent since their early 1989 peak, and in the past year C.D. rates have dropped more than three times as fast as home mortgage rates. The last time the prime matched mid-December's 7.5 percent was early 1987, but at the time six-month C.D.s paid an average rate of 5.95 percent, compared with 4.7 percent now. With the prime now down to 6.5 percent, banks are set for another round of deposit-rate slashing.

How can banks make these escalating charges and parsimonious payouts stick? Immobile consumers and declining competition. While financial deregulation encouraged a greater array of customer choices (beyond merely 5 percent on savings plus a toaster), the average consumer really can't compare the profusion of financial products being peddled by competing banks, ranging from C.D.s with rates tied to the stock market to five flavors of checking account at a single bank. Indeed, many consumers seem to regard their banks as they do their houses of worship—once a member, always a member.

The recent megamergers have further emboldened banks to tax consumers; because there is less competition, the banks are confident there will be little backlash. There were 15,000 banks in 1980; today there are about 12,500. By the end of the decade, most analysts predict some 4,000 to 6,000 more will be absorbed into existing institutions or closed down by the Federal Deposit Insurance Corporation. This summer's spate of bank megamergers—BankAmerica and Security Pacific out West, C&S Sovran and NCNB in the South and Chemical and Manufacturers Hanover in New York—are the harbingers of a greatly consolidated financial system.

While the giant mergers made the headlines, they are only part of the story. Small community banks are combining or are being bought up by their big-city cousins, and existing regional banks such as Fleet/Norstar are evolving into superregionals.

Most industry analysts attribute the big mergers to the need to cut overhead drastically to survive. BankAmerica, for example, plans to save $1 billion annually by firing up to 15,000 workers. But occasional candid public comments by industry leaders reveal another, longer-term motivation: With fewer competitors banks are in a stronger position to dictate con-

Mark Green is New York City's Commissioner of Consumer Affairs and the author or editor of a dozen books on government and business. Glenn von Nostitz is the Assistant Commissioner for Advocacy at Consumer Affairs.

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sumer interest rates. *Bank Rate Monitor* quoted Jerry Biuso, First Nationwide Bank's vice president for marketing: "I think that if this trend continues with big banks gobbling up lots of smaller banks and there are fewer players left, the pricing [deposit rate] is going to be reduced; there won't be as much competition."

American Banker reported that "analysts agree" that Wachovia Bank's takeover of South Carolina National "should realize major benefits over time from controlling a dominant market share in South Carolina." The "benefits," of course, are the banks', not the customers'. As Floyd Norris wrote in *The New York Times*'s "Market Watch" column, "The hope is that the new Chemical [Bank] will be able to cut costs by firing lots of tellers and moving out of unneeded branches, and that diminished competition will make it possible for everyone to gently push up the fees charged to individuals."

Such observations merely restate an elementary principle of competition: When the number of competitors goes down, prices go up. The application of this principle to the banking industry can be glimpsed in California, where banking is already concentrated among just a handful of institutions. *Bank Rate Monitor* reports that while California NOW accounts (checking with interest) pay less than anywhere in the country, Los Angeles and San Francisco banks charge the highest rates in the United States for credit cards, mortgages, personal loans and other consumer loans.

Since 1989, for example, BankAmerica has purchased nine failing savings institutions from the Resolution Trust Corporation in California, Arizona, New Mexico, Utah, Nevada, Idaho, Oregon and Washington. These takeovers were often quickly followed by service-fee hikes and deposit-rate cuts. And with the engorged BankAmerica soon to account for 40 percent of California's commercial banking deposits, not to mention a probable merger of the next biggest California banks, First Interstate and Wells Fargo, there is no obvious reprieve in sight for California's bank consumers. Robert Gnaizda of San Francisco's Public Advocates predicts that soon three banks will hold 93 percent of California's commercial deposits.

In a healthy competitive environment, it would be expected that some banks would try to undercut their competition by paying higher rates or charging lower fees. But mergers will make it harder for consumers to shop for better rates, and with the competitor across the street gone, a branch manager will think twice before adding peak-time tellers or Saturday hours.

In fact, smaller banks increasingly tend to look to the l... banks for pricing direction.

Bankers argue that the retail banking playing field includes nonbank competitors, like A.T.&T., which issues credit cards, or uninsured money-market mutual funds. But the vast majority of Americans still turn to one of the nation's 56,000 bank branches for checking accounts, home equity loans and, for that matter, credit cards. Few consumers can substitute a Merrill Lynch Cash Management Account for their bank checking account.

The bigger banks are worse for consumers because they generally charge more and pay less. The *Consumer Bank Scorecard*, issued annually by the New York City Department of Consumer Affairs, ranks banks on the basis of how much they charge for accounts and services and what they pay on deposit accounts. Every year, the *Scorecard* finds that big commercial banks are by far the costliest for consumers. The periodic surveys of California banks by San Francisco Consumer Action uncovered the same pattern. Indeed, the latest fifty-bank survey showed that California's four big commercial banks—BankAmerica, Security Pacific, Wells Fargo and First Interstate—coincidentally paid almost identical lower-than-average interest rates this summer on C.D.s, money-market-rate accounts and savings accounts. Their C.D. rates were the lowest in the state.

With rankings like these, it's not surprising that more than half of the respondents in a recent *American Banker* consumer poll agreed with the statement, "I prefer to do my banking at a smaller, local bank rather than at a larger bank." Still, with big banks' branches increasingly dominating the neighborhoods and shopping strips of the nation, and with only the bigger banks able to afford full-page newspaper ads and television advertising campaigns, small banks will find it harder to compete. BankAmerica will get away with its puny deposit rates because it will be everywhere, and convenience has been the number-one determinant of where Americans choose to bank.

The bigger-isn't-better principle applies particularly to poor urban neighborhoods. In New York City, the expanded Chemical Bank plans to close about seventy branches, although executives hasten to point out that only fourteen are in low- and moderate-income neighborhoods. But these are the same neighborhoods that suffered disproportionately from two waves of bank closures in the 1980s. A fifth of bank branches in the Bronx have closed since 1978—most in poorer areas like the South Bronx—even though the population has remained stable. Chemical's recent closure of one South Bronx branch and the imminent closure of another will reduce the number of banks in that community to only six, compared with twelve in 1983.

In Brooklyn's low-income Bedford-Stuyvesant community there is one bank per 27,200 people, a ratio more than five times higher than the national average. The ratio will rise to 30,200 per bank after Chemical carries out its plan to close the neighborhood Manufacturers Hanover branch. The community is still feeling the effects of the F.D.I.C.'s November 1990 shutdown of Freedom National Bank, which had a branch there.

In low-income South Central Los Angeles, BankAmerica

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and Security Pacific now own a total of fifteen branches. David Takeshima, chief consultant to the California Assembly Banks Committee, believes that about half of these will close when the merger is consummated—not many when stacked up against the 300 to 400 branches the banks expect to close everywhere but potentially significant to a resident of the area shopping around for a home-improvement loan.

Some industry observers claim the United States is "overbanked," that we don't need all of the 56,000 bank branches. Tell that to the working-class residents of the nation's Bedford-Stuyvesants, who are turning increasingly to costly check-cashing storefronts for basic bank services and to pawnbrokers for loans. In South Central L.A., there are fifteen banks but 122 check-cashing outlets. There might be some validity to the "overbanked America" argument in the case of fast-growth Sunbelt suburbs, which did see hundreds of branches open in the 1980s. But overall, the United States has fewer bank branches per capita than France, Britain, Germany and several other developed countries.

What will Congress do about the increasing concentration of the consumer financial services industry? About branch closures in already underbanked areas? Probably very little.

After the Senate passed a credit card interest rate cap last November, the stock market fell 120 points; the effort quickly died. Last fall Senate Banking Committee chairman Donald Riegle introduced a measure to curb mergers by limiting banks' market share, but the proposed ceilings were very high—no bank was to have more than 30 percent of a state's deposits or 10 percent of the nation's. His reform also lacked crucial metropolitan-area caps. Even this mostly symbolic measure went down to defeat, however, after intense lobbying by the banking industry, according to Peggy Miller, banking lobbyist for the Consumer Federation of America.

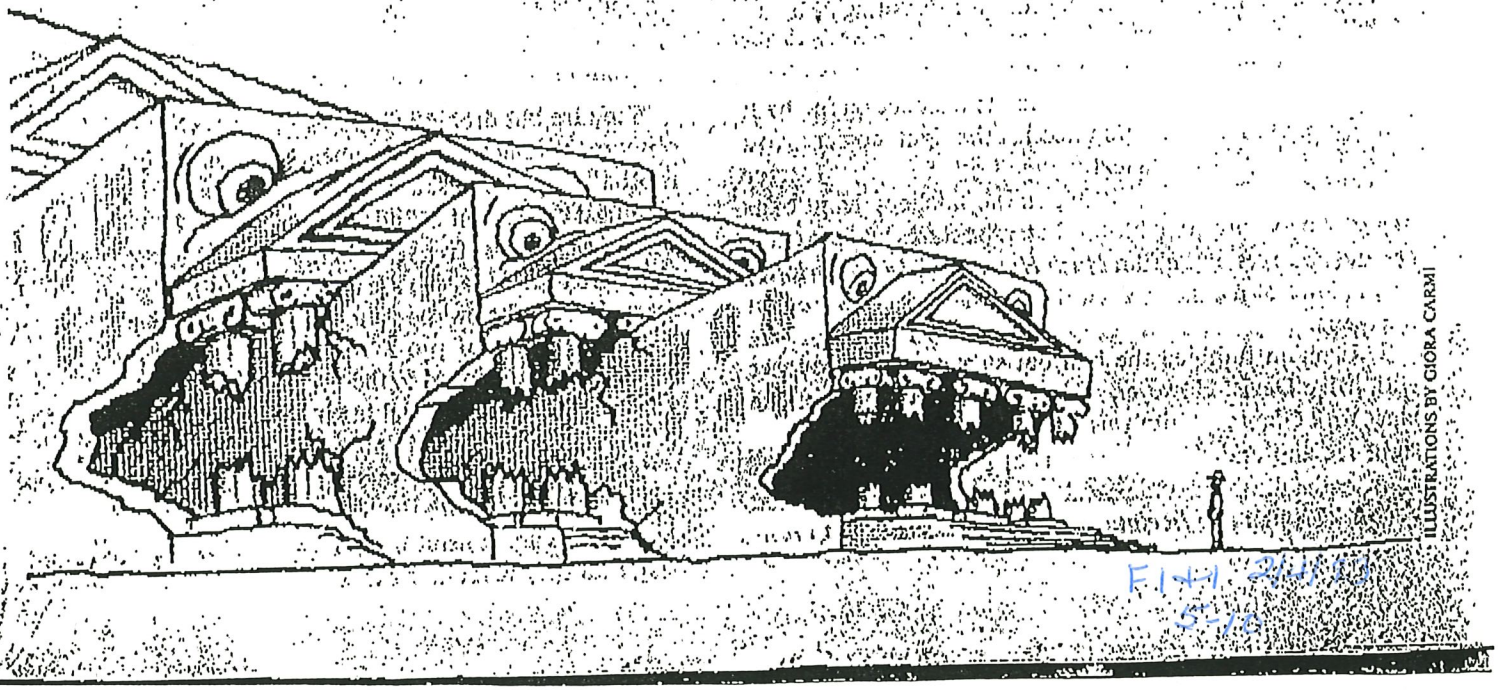
Congress might actually make it *easier* for banks like BankAmerica and NationsBank to live up to their names by enacting the interstate branching portion of the Bush Administration's failed reform bill. One industry consultant has predicted that by allowing consolidation of operations instead of requiring separate businesses in each state, interstate branching would save banks $10 billion. It would also make these banks even more powerful and ubiquitous, with undesirable effects on competition.

Meanwhile, the American Association of Retired People is promoting passage of a "lifeline" banking provision that would require banks to offer low-cost checking and savings accounts. It would help soften the impact on lower-income people of climbing service charges and should become part of a comprehensive restructuring package, if one ever passes Congress.

Why doesn't the Justice Department step into the breach? After all, antitrust standards of both the Clayton and Sherman acts do apply to banking. And a new study by the Southern Finance Project concludes that the BankAmerica–Security Pacific merger will produce commercial bank concentration levels surpassing the Justice Department's "highly concentrated" threshold in seventy-five of the ninety-nine counties where the two companies now compete in California, Oregon, Washington, Arizona, Nevada and Idaho.

When the recent spate of mergers started in earnest, it looked like Justice might take its own antitrust standards seriously. In March 1991 the department stopped a Hawaii merger and last summer insisted that Fleet/Norstar unload a few branches before taking over the Bank of New England. But the Justice Department's mood seems to be growing more permissive. It will probably stamp "approved" on every one of the recent merger proposals. Why? Because of the way the department is defining "relevant market." So long as "relevant markets" are deemed regional or national and do not include local markets for, say, small-business loans, the department will merely nibble around the edges of the proposed consolidations.

One innovative approach to help communities left in the lurch after anticompetitive mergers is to create community-development credit unions in closed bank branches. These small, full-service institutions take deposits from and make loans principally in their surrounding communities. With



ILLUSTRATIONS BY GIORA CARMI

community prodding, Manufacturers Hanover helped set up just such a credit union after it closed its branch on New York's low-income Lower East Side in 1985. Credit unions are not a panacea—they do let big banks off the hook—but they can provide a useful alternative to the surviving branches of the megabanks.

As the popularity of the credit card cap showed, consumers are becoming less willing to endure ever-higher fees and interest charges. A revolution is like waves lapping at a cliff, said French historian Henri Sée. For decades nothing seems to be going on, and then the cliff falls in. □

SUNDAYS, BLOODY SUNDAYS

Pro Football—The Maiming Game

JACOB WEISMAN

The Super Bowl, our national Circus Maximus, is upon us once again. But, alas, the tedious, two-week run-up to that organized mayhem on January 26 can leave the dedicated football fan fidgeting like a benched quarterback. Fortunately, football sells its violence in many ways. Several videos produced by the National Football League can help the aficionado fight withdrawal and keep his insanity while awaiting Super Bowl XXVI; these tapes include *The NFL's Greatest Hits, Thunder and Destruction* and *The NFL's Crunch Course*.

Crunch Course begins with the frozen image of Joe Theismann poised to throw. Beneath the Washington Redskins' former quarterback are these words from the late owner-coach, George Halas: "Pro football will always be a game of hitting." The frame unfreezes. Theismann lifts his arm to pass and is indeed hit, brought down from his blind side by Mike Davis, a blitzing safety on the Oakland Raiders. Next we see Ron Jaworski, of the Philadelphia Eagles, get leveled by a Chicago Bears defender. Again and again, quarterbacks, wide receivers and running backs get nailed. "It's like swinging a golf club," explains Sam Wyche, former head coach of the Cincinnati Bengals. "If the club is not reflexing at the right moment, you're not going to get quite the distance on the ball; but if you hit into a guy and uncoil at the right moment, you explode through him." Next we see Dick Butkus, a former linebacker for the Bears, sitting on the sidelines, hand bandaged, fingers dripping blood. Later, he stares into the camera and observes of the film *Hush Hush . . . Sweet Charlotte*, "I got kind of a charge when that head came rolling down the stairs."

Theismann fumbled the ball but survived his encounter with Mike Davis. However, in 1985 Lawrence Taylor of the New York Giants hit him with a savage tackle that broke his right leg and ended his career. That play isn't included in *Crunch Course*, but we do see lots of Taylor in other situations. Play after play, he is relentless: pushing aside blockers, spinning away from double teams, clawing his way toward the quarterback. At one point, he taunts Eagles quarterback Randall Cunningham: "You mine, baby; you mine," he says, pointing. Later he tells a teammate, "Let's go out there like a bunch of crazed dogs and have some fun."

In 1905, before the days of protective padding and hard helmets, football was on the verge of being abolished after twenty-three deaths resulted from play that year. Instead, the forward pass and the ten-yard rule for first downs were introduced to open up the game, thus making it safer. The innovations may have worked to some extent in the leather helmet era, but they fall far short today. According to a 1989 study conducted by two Ball State University professors, Beverly Pitts and Mark Popovich, 66 percent of N.F.L. players who played after 1970 had some form of debilitating injury when they retired.

"It's not the exception, it's the rule," says Leigh Steinberg, an agent representing more than seventy players in the N.F.L. "Every player I represent is injured to some extent in every single game." Ten years ago, Steinberg represented three first-round draft choices. None are still in football. Kenny Easley suffered degenerative kidney damage, Curt Marsh had four back operations that have taken inches off his spine and Neil Lomax ended up having his hip replaced.

On November 24 Broderick Thomas, a linebacker with the Tampa Bay Buccaneers, felled the Giants' Jeff Hostetler, fracturing three of the quarterback's vertebrae and putting him out for the rest of the season. Luckily, he suffered no neurological damage, as did Mike Utley the Sunday before. A Detroit Lions guard, the 6-feet-6-inch, 290-pound Utley landed on his head in a game against the Los Angeles Rams. "When he rolled over on the ground," said David Rocker, the rookie defensive tackle who had blocked Utley, "I saw his eyes moving but his body wasn't moving." Despite two and a half hours of surgery on a fractured sixth cervical vertebra and other spinal injuries, Utley, who is 26 years old, will be paralyzed from the chest down for the rest of his life. In 1977, Darryl Stingley was a 26-year-old wide receiver with the New England Patriots when he collided with Raiders safety Jack Tatum in an exhibition game. He has been a quadriplegic ever since.

The rare but dramatic injuries like Utley's and Stingley's obscure the long-range consequences of routine injuries in pro football. Len Teeuws, a former N.F.L. lineman and now an actuarial consultant in Indianapolis, surveyed 1,800 players who spent at least five years in the league between 1921 and 1959. He found that the life expectancy of this group was 62 years, 12 years below the national average for men. The most ambitious study of pro-football injuries and their consequences, commissioned by the N.F.L. Players Association and conducted by the National Institute of Occupational Safety and Health, is due out in about a year.

"When you're young," says Charlie Krueger, a former nose tackle who played with the San Francisco 49ers, "you think the old guys are bullshitting you [when they talk about injuries], that they're making excuses for their own lack of inter-

Jacob Weisman is a freelance writer living in the San Francisco Bay Area.

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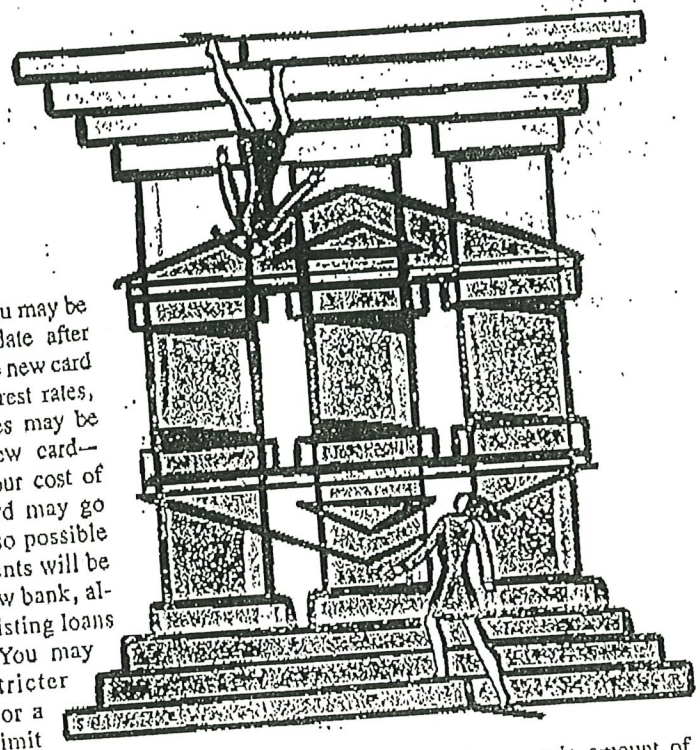
[more for your money]

BY BARBARA GILDER QUINT

GLAMOUR JAN 1993

What to expect if your bank merges



DUE TO COST CONSCIOUSness, banks all across the country—such as Manufacturers Hanover and Chemical in New York, Bank of America and Security Pacific on the West Coast, NCNB and C&S/Sovran in the South—have announced planned mergers in recent months. Experts predict that many more consolidations will follow in the next few years. Here's what to expect if your bank merges.

You'll get a flurry of mail. Although much of it will alert you to superficial changes (such as a new logo or new bank officers), do read everything—some letters will give you key information about the matters covered below.

Your branch may close. Banks usually merge to cut costs, and superfluous branches are among the first things to go. If your bank merges with another that has a branch within a block or two of yours, your branch may be shut down. Your account will then be automatically transferred to the nearest surviving branch of the merged bank. If you've established relationships with people at your old bank, you might have to start from scratch with a whole new set of personnel.

You may get a new account number, new checks and a new ATM card. If merging the two banks causes a duplication of account numbers (frequently it does not), you will be assigned a new one and sent new checks and a new ATM card. Typically, the numbers on your new checks (which will usually be issued free of charge) will begin where the old ones left off. You will have to choose a new PIN (personal identification number) when you get your ATM card. If you are *not* assigned a new account number, you can continue using your checks until your current supply runs out; you'll receive new ones when you reorder. In this case, you won't need a new PIN number for your new ATM card.

In either case, your monthly statement may look different from the one you're used to, or come on a different day of the month.

The terms of your credit may change. You can continue using your old credit card, but after a month or two you may be notified of a cutoff date after which you must use the new card they'll send you. Interest rates, grace periods and fees may be different on your new card—which means that your cost of keeping a credit card may go up *or* down. It's also possible that loan arrangements will be different at your new bank, although terms of existing loans will not change. You may be faced with stricter lending standards or a lower borrowing limit on your credit card.

You may eventually earn less interest. Many experts suspect that bank customers do *not* benefit in the long run from mergers. Fewer banks means less competition, and the merged banks will have less incentive to woo customers with attractive rates.

If you haven't been happy with your bank, a merger is a good opportunity to consider making a change. You're already going to have to do a certain amount of paperwork and perhaps learn to deal with new personnel; changing to a bank where you like the interest rates, the hours and the staff won't require much more effort. Even if you haven't been dissatisfied, it might be worth it to check out the competition's interest rates, fees and minimum-balance requirements.

CHILD SUPPORT: better ways to collect it

WHEN CONGRESS PASSED the Family Support Act of 1988, many people hailed it as a breakthrough for divorced women. But many women haven't benefited, says Carole Chambers, a California financial consultant and author of the newly published book *Child Support* (Summit). A recent U.S. Census Bureau survey shows that in 1989, 54 percent of all single mothers were not awarded any child support or were awarded it but collected nothing. The problem, Chambers says, is that although the new laws *have* technically made child support collection easier, too many women still don't understand how to take advantage of them. Here, a user's guide. (Note: For convenience, we assume below that the custodial parent is the mother. The provisions also apply if the custodial parent is the father.)

Be sure you ask for enough support. Many women don't look far enough into the future. For example, if you have a three-year-old child, you may not have calculated how much more expensive it will be to feed, dress and educate a seven-year-old, a teenager or a college student. If you ask for support based solely on your child's *present* needs, it will be inadequate in the future. Other common reasons mothers don't ask for enough child support are guilt over having "failed" at marriage or the desire to prove one's "independence" from an ex-spouse.

Know how much support you're legally entitled to. Ideally, you and the child's father will work out a fair agreement between you. If not, each state has guidelines that indicate how much a judge should award. For example, in Wisconsin, a noncustodial father will generally be *(Continued)*

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Bank IV drops correspondent data-processing services

By KEVIN BURMGARNER

Bank IV Kansas has decided it will no longer offer data-processing services to its correspondent banks, forcing about 25 institutions to seek alternatives.

The banks, scattered across the state and ranging in size from $20 million to $75 million in asset size, were notified last month that they have until June 30 to find another source to do everything from posting checks and balancing general ledgers to calculating account statements and asset-liability mixes.

Traditionally, smaller banks use larger institutions as correspondents to help them provide a range of services to their customers that otherwise would be unavailable or too costly.

Correspondent banks also help smaller institutions by participating in large loans. Data processing is also a correspondent function.

The smaller banks pay fees for such services.

Bank IV's decision to drop data processing on a correspondent basis was a step toward focusing the limited resources of Bank IV, said Jim Faith, senior vice president for correspondent banking/agribusiness for Bank IV Kansas. Bank IV needs additional data-processing capabilities to handle millions of dollars in acquisitions it has announced in the past few months, Faith said.

"Around here, with the growth Bank IV and Fourth Financial (the parent company) has had and expects to have . . . we didn't want to ever compromise" the level of data-processing services, Faith explained.

> "You don't need to be Albert Einstein to figure out we're growing a lot around here," Faith said.

"You don't need to be Albert Einstein to figure out we're growing a lot around here. It was a matter of allocation of resources. We only have so many computers and personnel."

Bank IV Kansas has 75 offices in 31 Kansas communities. Since August, it has acquired 16 offices in Tulsa, Okla. All told, Fourth Financial now controls $5.5 billion in assets.

But its own growth and needs were not the sole considerations in its move to drop data processing, Faith said. The specialized nature and ever-changing regulatory demands associated with the labor-intensive effort contributed.

Bank IV charges anywhere from $100 to $18,000 a month for correspondent data processing, depending on the amount and complexity of the functions required, Faith said.

Without being specific, Faith said the data-processing function is making money, although he acknowledged that "it wasn't big money for us."

Bank IV will continue to offer its other correspondent banking services — from check clearing to loan participation — without interruption, Faith said.

Both First National Bank in Wichita and Union National Bank, the city's second- and third-largest banks, respectively, offer data-processing services to their correspondents.

But some in the industry are watching banks seek other alternatives.

"I'm seeing them either go in-house — there are computer systems that are now priced such that they can do it in-house — or they go to specific data-processing providers . . . rather than through a correspondent," said Noel Estep, president of Bankers' Bank of Kansas, a full-time correspondent service in Wichita that does not offer data processing.

Steve Worrell, chief financial officer at UNB, said banks of different sizes are heading in opposite directions to have their data-processing needs met.

"For larger banks, it's out-of-house," Worrell said. "For smaller banks, it's in-house and that cycle changes. We've been through it two or three times."

Bank IV is recommending Data Center Inc., a Hutchinson company devoted exclusively to data processing, to those banks it is dropping.

Three already had signed with Data Center prior to Bank IV's announcement, said Steve Davis, vice president of marketing for Data Center. And he said he is confident that his company will "get a majority" of the remainder.

Cancellation

The Arizona Republic Sunday, May 10, 1992

LARGEST ARIZONA BANKS' DEPOSITS, BRANCHES

These rankings are estimates, based on latest figures provided by the banks.

Bank	Deposits	Branches
1. Valley National Bank*	$8.9 billion	208
2. Bank of America Arizona	$8.4 billion	169
3. First Interstate Bank of Arizona	$6.2 billion	155
4. Citibank Arizona	$2.1 billion	59
5. Independent Bancorp of Arizona	$2.1 billion	49

*To be renamed Bank One Arizona.

Sweeping changes in banking industry likely to continue

By William H. Carillo
The Arizona Republic

Bye, Valley National Bank and Security Pacific Bank Arizona. Hello, Independent Bancorp of Arizona.

The disappearance of two names from Arizona's banking scene and the emergence of a third within a year symbolize the sweeping changes that will alter the nature of banking in the state for years to come.

And more changes are on the way, as out-of-state institutions may set up "de novo," or entirely new, operations in Arizona beginning on June 30.

In this new banking lineup, executives of remaining institutions say, "bigger is better" may be less desirable than targeting selected customer markets to secure a niche.

After enactment of a 1986 law allowing out-of-state banks to establish Arizona institutions, the state became the latest to experience the wave of "megamergers" sweeping U.S. banking.

In its wake, Arizona now lacks a single, locally owned bank among its top five financial institutions.

In August, BankAmerica Corp. and Security Pacific Corp., two California-based banking rivals with Arizona branches, announced plans to join in the largest merger in U.S. banking history.

The merger took effect April 22 in a new BankAmerica entity that encompasses 2,392 branches in nine Western states. It is the nation's second-largest bank, behind New York-based Citicorp.

The new Bank of America Arizona ranks as the state's second-largest banking institution, with an estimated $8.4 billion in deposits and 169 branches, slightly behind Valley.

But to get there, BankAmerica had to divest more than $2 billion in its Arizona assets to satisfy regulatory worries over overconcentration.

That hurdle was cleared April 21, the eve of the scheduled merger completion, when a California-based investor group announced agreement to buy the deposits and 49 branches.

The divestiture, once approved, would instantly create Arizona's fifth-largest and only independently owned bank among the top five spots.

The bank holding company, Independent Bancorp of Arizona, plans to target lending to small to midsize businesses, as well as to families.

"There's a real crying need for a genuine community bank," founder Anthony Frank said.

On April 14, Valley National Bank, Arizona's sole remaining major locally owned bank, announced plans to merge with Columbus, Ohio-based Banc One Corp., in what would be the nation's seventh-largest financial institution.

A Jan. 1 target date has been set for completion of the deal, with Valley thereafter being called Bank One Arizona, still the state's biggest.

Banc One Chairman John B. McCoy says the new entity plans to target middle-market, retail banking.

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TESTIMONY
OF

PETE MCGILL

OF
PETE MCGILL & ASSOCIATES

ON BEHALF OF

THE COMMUNITY BANKERS ASSOCIATION

PRESENTED BEFORE

THE SENATE FINANCIAL INSTITUTIONS COMMITTEE

February 4, 1993

RE: SB 104

FI#1 2/4/93
Attachment #6

Mr. Chairman, Members of the Committee, I am Pete McGill of Pete McGill and Associates and we have had the privilege of representing the Community Bankers Association since 1979.

After learning of the results of the surveys taken by the Kansas Bankers Association and the Community Bankers Association on the issue before you, showing
70 to 80 percent of the bankers in Kansas **OPPOSED** to raising the statutory limits on deposits controlled by one bank, I thought perhaps no additional testimony would be necessary and perhaps it isn't. However, I have some past experiences I want to share with you.

I realize most of you have never served on this committee before and may not know some of the history of this legislation. Some of you have already asked me about the differences between the Kansas Bankers Association and the Community Bankers Association.

The Community Bankers Association (CBA) was organized in 1978 as the Kansas Independent Bankers Association and only recently changed the name. Nearly all CBA members were then and are now members of the Kansas Bankers Association. However, because of a difference in philosophy on bank structure issues, the Community Bankers formed their own organization. Just as their name suggests, most of the members of CBA are community bankers, and most of them are from rural areas and smaller communities.

In 1985, the Multibank Holding Company bill passed in the House by one vote after a lengthy Call of the House and a lot of arm twisting--calls from the Governor's office to the floor of the House, and calls to the floor from a few bankers that were proponents of the bill. One legislator was even threatened with calling a $30,000 loan and others were threatened with economic and political retaliation. One legislator was promised a job if the bill passed, while another legislator was told she would lose her job if it she didn't vote for the bill. Similar things happened in the House in 1990 on the Interstate Banking bill. The bill had been referred to two separate committees and the first committee reported the bill adversely. However, the night before the second committee was going to report the bill adversely, a legislator had it explained to him in language he could understand that if he did not vote in favor of the bill it could have severe economic and political ramifications for him. He was trembling and had tears in his eyes as he explained to me why he had changed his position on the bill and the measure finally came out of the second committee by one vote.

There is one bank in Kansas asking for this piece of legislation. Apparently there are 70 to 80 percent of the bankers in Kansas who do not feel that this

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legislation is in the good interest of the citizens of Kansas or the banking community.

In 1983, when we first started talking about Multibank Holding Companies, Jordan Haines, President of Fourth Financial Corporation told this committee, "Fear that MBHC's, once legalized, will quickly dominate the banking industry in Kansas are over blown." That is a direct quote.

In 1987, Tom Clevenger, Fourth Financial Vice-President said their two Wichita banks and their eight banks in other towns would not become a single unit. He stated and this is a quote, "We don't run them like robots. Each community has its own character. And each bank has its own character and identity."

In 1991, Fourth Financial Corporation announced they would consolidate its 13 separate Bank IV banks under a single statewide banking system. Is that to say as Mr. Clevenger suggested that they are now run like robots with no bank charters, no local bank boards or directors and no separate identity?

Mr. Clevenger announced at the same time the termination of 230 bank employees. Something that this committee had previously been told would not happen.

In 1985, when the MBHC law was enacted, the deposit cap was nine percent and this committee was told at that time that would be adequate. In 1990, proponents of change requested and received a change in the statute from nine to twelve percent.

Sam Forrer, a banker from Ulysses and one of the originators of the Community Bankers Association, testified at the time and I quote from his testimony, "You have never gotten the full story, and you are not getting it now. Remember just 3 or 4 years ago when these same proponents said a 9 percent control level of Kansas deposits was enough for one banking organization? Their appetite for size is insatiable. . .so now they want a modest 33 percent increase to 12 percent. What the proponents want in size -- it's an ego thing. And they believe they can get this much now, but make no mistake about it! They'll be back until there are no limitations on who and how much any organization can control, in-state or out -of - state." Keep in mind that was 1985. How prophetic that was and here we are. For the benefit of you new members, during the closing days of the 1992 legislative session, a representative of Bank IV offered an amendment to a bill before this committee similar to the language contained in SB 104. That amendment was rejected.

Members of the Committee, the Community Bankers Association respectfully asks you report SB 104 adversely.

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